PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

FOR

January to December 1860.

VOL. VI.

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Errata.

Column	44	line	19.	After "*animals*" read "*from the Horse Tax.*"
„	359	„	19.	For "*The Vice-President*" read "*Sir Charles Jackson.*"
„	523	„	5.	For "*to the Post Office*" read "*through the Post Office.*"
„	670	„	12.	For "*returns*" read "*the returns.*"
„	720	„	38	For "*mendment*" read "*amendment.*"
„	845	„	3.	For "*Section*" read "*Rule.*"
„	1173	„	12.	Omit the word "*to.*"
„	1225	„	29.	For "10 *o'clock*" read "1 *o'clock.*"

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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA.

Saturday, January 7, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,
Hon. Sir H. B. E. Frere,
P. W. LeGeyt, Esq.,
H. B. Harington, Esq.,
H. Forbes, Esq.,
and
A. Sconce, Esq.

FOREIGNERS; AND IMPORT DUTY ON SALT (N. W. P.)

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "to revive and continue in force for a further period Act XXXIII of 1857 (to make further provision relating to Foreigners)," and the Bill "to empower the Governor-General in Council to increase the rate of duty on Salt imported into the North-Western Provinces of the Presidency of Bengal."

BOUNDARY MARKS (STRAITS SETTLEMENT).

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement, suggesting extension to that Settlement (with necessary modification) of Act I of 1847 (for the establishment and maintenance of Boundary Marks in the North-Western Provinces of Bengal).

MR. SCONCE moved that the above communication be printed.

Agreed to.

EXCISE DUTY ON SALT (MADRAS).

MR. FORBES presented the Report of the Select Committee on the Bill "to establish a duty of excise on Salt manufactured in the Presidency of Fort St. George."

LAND FOR PUBLIC PURPOSES.

MR. SCONCE presented the Report of the Select Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)."

CATTLE TRESPASS.

MR. SCONCE also presented the Report of the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

PASSENGERS.

MR. LEGEYT moved that the Bill "to amend the law relating to the carriage of Passengers by Sea" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

CIVIL PROCEDURE.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I provided as follows:—

"From and after the passing of this Act, so much of the 332nd Section of Act VIII of 1859 as enacts that 'If the appeal lie to the Sudder Court it shall be heard and determined by a Court consisting of three or more Judges of that Court,' shall be repealed, and in lieu thereof the following shall form portion of the said Section:—

'If the appeal lie to the Sudder Court, it shall be heard and determined by a Court consisting of two or more Judges of that Court. *If the Court consist of two Judges only, and there is a difference of opinion upon the evidence*, and one Judge concur in opinion with the Lower Court as to the facts, the case shall be determined accordingly. If, in a Court so constituted, there is a difference of opinion upon a point of law, the Judges shall state the point upon which they differ, and the case shall be re-argued upon that question before one or more of the other Judges, and shall be determined according to the opinion of the majority of the Judges of the Sudder Court."

MR. HARINGTON said, he had to ask the assent of the Council to a slight verbal alteration in this Section, but previously to moving the same, he wished to make a few remarks on the subject of the rule which the Section proposed for adoption. That rule provided for the hearing of appeals in the Sudder Courts, by a bench which might consist of only two Judges, the existing rule being that no appeal to the Sudder Court, whether regular, special, or miscellaneous, should be heard and determined by a smaller number of Judges than three sitting together. In introducing the present Bill he (Mr. Harington) explained at some length the practice of the Sudder Courts of the Bengal Presidency in disposing of regular and admitted special appeals, from the earliest times up to the present period; and speaking from his own experience as a Judge of the Sudder Court for the North-Western Provinces, he bore testimony to the great advantages which had resulted from the adoption by that Court of the rule requiring that all regular and admitted special appeals should be disposed of by a bench of three Judges. He was of course unable to say anything, of his own knowledge, as to the practical effects of the rule in the Sudder Court at Calcutta, where it was also followed; but he quoted the evidence of the late Lieutenant-Governor of Bengal, Mr. Halliday, given before a Committee of the House of Commons, in which he stated that it was very remarkable of how much greater weight the decisions of the Sudder Court had been since the introduction of the rule in question than they were before. He then proceeded to notice the reason which had led the Government to propose to the Council a modification of the rule which had been embodied in the new Code of Civil Procedure, notwithstanding the beneficial effects which were generally admitted to have attended its introduction. This was the very great difficulty, arising partl, from financial and partly from other considerations, of providing the amount of agency necessary to enable the Sudder Judges to dispose of the appeals instituted before them within a reasonable period.

He had been induced to make these remarks chiefly in reference to the petitions which had been presented to the Council against the Bill. One of these petitions was received by the Council after the Select Committee, to which the Bill was referred, had made their Report, and it consequently had not been taken into consideration by the Committee. He was not prepared to say that the petitioners had no ground for the objections taken by them to the Bill. On the contrary, he thought it must be admitted that there was considerable force in some of their objections, but the fact was the present case was one of necessity. The Sudder Court at Agra, in reporting on the Bill, observed, that

"Section 332 of Act VIII of 1859 was based on a sound principle, and any scheme which departed from that principle was to be deprecated. But arrears of work, the vexatious delay and litigation thereby engendered, were serious evils. If the Government were unable to give a sufficient number of Sudder Judges, some such measure as that proposed in the Bill must be adopted, and sound principle be sacrificed to expediency."

In these remarks he thought they must look for a defence of the present measure. He supposed that

nobody would deny that an Appellate Court, composed of three Judges, must be a better Court than a Court composed of only two Judges, or that the decisions of a Court of three Judges must generally give more satisfaction to the suitors and to the public at large than the decisions of a Court of only two Judges. But when the choice was found to lie between a Court of three Judges and great and vexatious delays, and a Court of two Judges who were able to dispose of the cases brought before them with reasonable celerity, he thought there could be no doubt that the Government should choose the latter, suitable provision being at the same time made for the disposal of appeals in which a difference of opinion might arise between the Judges. It was hoped that this had been done in the Section under consideration; and as meeting in some degree the objections which had been taken to that Section, he might observe that its character was permissive only, not imperative, that is to say, there was nothing in the Section to prevent three Judges of the Sudder Court from sitting together to hear appeals, whenever the state of the file admitted of this being done without inconvenience, or whenever in any particular case the Court might consider that any special ground existed for the appeal being heard before three Judges; and he (Mr. Harington) had no doubt that in every case of more than ordinary importance, the Judges of the Sudder Courts would gladly avail themselves of the power thus reserved to them.

He would now proceed to mention the verbal alteration in the Section which it seemed desirable to make. It had been suggested that, in construing the Section as it was at present worded, a doubt might arise whether it applied to all appeals, regular, special and miscellaneous, or whether its application was not restricted to regular appeals: he (Mr. Harington) must confess that such a doubt would never have occurred to him. The language of the Section of the original Code which it was proposed to amend was not more specific than the language of the Section intended to be substituted for it, and he had never heard of any doubt being entertained as to the applicability of that Section to all classes of appeals falling under the Code. Still it was not desirable to run the risk of a misconstruction of the Section such as he had mentioned, particularly as it would leave no rule for the guidance of the Sudder Courts in disposing of special and miscellaneous appeals, and he proposed, therefore, to introduce words which, he thought, would remove all doubt upon the point. With this view he begged to move the omission of the words in italics, and the substitution for them of the words—"If, when the Court shall consist of only two Judges, there is a difference of opinion upon the evidence in cases in which it is competent to the Court to go into the evidence."

Agreed to.

MR. HARINGTON next moved the addition of the words "by whom the appeal is heard" at the end of the Section.

The Motion was carried, and the Section as amended then passed.

Section II was passed as it stood.

Section III provided as follows:—

"All rules and forms framed by the Sudder Court under the provisions of Section 381 of the said Act when so framed shall be submitted to the Governor-General of India in Council, and after the same shall have been approved by the said Governor-General of India in Council, they shall be of the same force as if they were inserted in the said Act."

MR. FORBES said, he wished to ask his Honorable friend to omit this Section. It formed no part of the original Bill, but had subsequently been added by the Select Committee, and he thought the change which it made in the law was too important to admit of its being passed without its being published for general information. He was aware that Act XVII of 1841 made the same provision for the Presidency of Bengal that it was now proposed to extend to Bombay and Madras; but that law was confined to Bengal alone. The Section under con-

ideration applied not only to Bengal but also to Madras and Bombay, and the Governments of those Presidencies had had no opportunity of expressing their opinion upon it. When Act XVII of 1841 was passed, it was previously published in the usual way, and the Government and the Sudder Court of Bengal had an opportunity of making any representations they pleased regarding the proposed Law, and he was of opinion that the Governments of the other Presidencies should now be allowed the same opportunity. He would give no opinion on the abstract propriety of the Section, but as the Civil Procedure Code would probably, from time to time, require further emendations, opportunity would be afforded to introduce this Section in some future Bill when it would be published in the usual way. On these grounds, he would ask his Honorable friend to assent to the omission of this Section.

MR. HARINGTON said, he was not unwilling to accede to the proposal of his Honorable friend, the Member for Madras, and to exclude the Section before the Committee from the present Bill. As noticed by the Honorable Member for Madras, the Section did not form part of the original Bill, but had been introduced by the Select Committee. It could not be denied that the provision, which the Section contained, was a very important one, and the local Governments might not unreasonably claim to be heard on the subject of it before it was passed into law. An opportunity might be afforded to those Governments of expressing their sentiments on the provision in question by republishing the Bill before it was read a third time, but this would necessarily cause a delay of some weeks; and, looking to the length of time, that from accidental circumstances the Bill had already been before the Council, and to the object chiefly aimed at in the introduction of the Bill, namely, the relief of the Sudder Courts, some of which, particularly the Calcutta Court, were much oppressed with work, he thought it better that he should assent to the proposition of the Honorable Member for Madras, though reserving to himself the right of bringing forward the provision at some future time either in a separate Bill or in any new law which might be introduced for the amendment of the Code of Civil Procedure. At the same time he might remark that, at the time the Section, to which it was proposed to add the provision under discussion, was before the Select Committee on the Civil Procedure Bill, it was agreed that that provision should be included in it. Why it was afterwards omitted he was unable at present to say. He thought there could be no doubt that the provision was a very wholesome one. If a uniform Code of Civil Procedure for all the Courts in India was desirable, it could be no less desirable that there should be uniformity in any subsidiary rules that might be adopted for carrying the Code into effect. This uniformity could only be secured by requiring that all rules which might be proposed should be confirmed by some general controlling authority, and that until they had been so confirmed they should have no force. Now, it appeared to him (Mr. Harington) that the only authority to whom that power could properly be entrusted was the Government of India, all the members of which were also members of the Legislative Council, and in their double capacity they could always prevent any rule from being adopted which they considered inconsistent with the original Code, or contrary to the intentions of its framers; but still, as he had already said, he was very willing to consent to the proposition of the Honorable Member for Madras, and he would therefore move that the Section be struck out of the Bill.

The Section was then put and negatived.

Section IV and the Preamble and Title were severally passed as they stood; and the Council having resumed its sitting, the Bill was reported with amendments.

MR. HARINGTON gave notice that he would, on Saturday next, move the third reading of the Bill.

ADMINISTRATOR GENERAL.

MR. FORBES gave notice that he would on the same day move the first reading of a Bill to amend Act VIII of 1855 (to amend the law relating to the office and duties of Administrator General.)

PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Bombay Government on the subject of inserting a Clause against fraud in the new Penal Code, be laid upon the table and referred to the Select Committee on that Bill.

Agreed to.

PASSENGERS.

MR. LEGEYT moved that Sir Bartle Frere be requested to take the Bill "to amend the law relating to the carriage of Passengers by Sea" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, January 14, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,
Hon. Sir H. B. E. Frere,
P. W. LeGeyt, Esq.,
H. B. Harington, Esq.,
H. Forbes, Esq., and
A. Sconce, Esq.

STAMP DUTIES.

THE CLERK presented a Petition of the British Indian Association concerning the Bill "to consolidate and amend the law relating to Stamp Duties."

MR. SCONCE moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

LAND FOR PUBLIC PURPOSES.

THE CLERK presented a Petition of the Bombay Association concerning the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes.)"

MR. LEGEYT moved that the Petition be printed.

Agreed to.

ADMINISTRATOR GENERAL.

MR. FORBES said, he should detain the Council but a very short time in introducing the Bill, of which he had given notice, for the amendment of Act VIII of 1855.

That Act was passed to amend the law relating to the office and duties of Administrator General, and it had generally been found fully efficient for all the purposes for which it was enacted. There were, however, one or two points on which an alteration of the law was required, but the interference of the Legislature was needed, not on account of any defect in the original law, so much as on account of the very poor remuneration which was now attached to the Administrator General's Office at Madras.

It appeared from a letter from the Advocate General to the Government of Madras, which would be found in the annexures printed with this Bill, that in several cases loss had resulted to the Administrator General from administering to small Military Estates, not all of which were solvent, and the consequence had been that the Administrator General had availed himself of the law being permissive only, and not imperative, and had declined to take out letters of administration to such estates when called upon to do so by the Military Secretary to Government.

Section XI of the Act made it imperative on the Administrator General to take out letters of administration in cases when a deceased person, not being a Mahomedan or Hindoo, might have died possessed of assets exceeding five hundred Rupees, but this necessity to act was not laid upon the

Administrator General when the assets fell short of five hundred Rupees, and as the expenses of letters of administration were great, and the fees due to the Adminstrator were small, it was perhaps not very unnatural that there should have been an indisposition to act.

In Bengal, as he had learnt on a reference to the present Officiating Administrator General, it was not the practice to take out letters of administration in the case of the small estates to which he had referred, but neither was it the practice to refuse to intervene to secure and distribute the assets, and this was done either by the Administrator General granting certificates to applicants under Section XLIII of the Act, or by the Administrator General on his own responsibility collecting and distributing the assets without taking out letters, and thus saving all expense to the estate but the charge of his own commission.

One object of the present Bill, therefore, was to make the law accord with the present practice of the Administrator General's Office in Bengal.

But the want of some further provision of law had been felt in the case of small estates other than Military estates, for although by the present Act the Administrator General was authorized to give certificates to collect assets in estates of not more than five hundred Rupees to the next of kin, no means were afforded to creditors to obtain payment of their dues in cases wherein the next of kin might not take out a certificate, and the Administrator General might not administer.

It seemed only just to give the assistance of the law to creditors under these circumstances, and to enable them to obtain administration from the Court, when neither the Administrator General nor the next of kin might act. It was provided therefore in this Bill that, under the circumstances just stated, the Court might grant letters of administration to a creditor.

Lastly, some inconvenience had been felt at Madras from the want of a provision, enabling Government temporarily to supply the place of the Administrator General on occasion of his absence on account of illness, or from any other cause. He was aware that the difficulty had not been felt in Bengal, and that at the present moment there was an officiating Administrator General, but he imagined that the Government was bound to take the opinion in such a matter of its legal advisers, and the Madras Government had been advised that under the wording of the Act an acting appointment could not be made to the office; and that the Court at Madras would refuse to recognise any acting incumbent. At all events no harm could result from giving the power, and at the worst it would be a redundancy.

He would only further add that, in drawing a Bill to amend a law so professional in its character as Act VIII of 1855, he had very largely availed himself of that aid which the learned Clerk of the Council had been at all times prepared so ably and so cheerfully to afford, and he was sure that he spoke the general opinion when he said that, however much they might all rejoice at the professional advancement which that learned gentleman had received, there was but one feeling of regret at the prospect of their being so soon deprived of his services.

The Bill was read a first time.

PORT-DUES (BASSEIN).

MR. HARINGTON moved the first reading of a Bill "for the levy of Port-dues and fees in the Port of Bassein." He said, this Bill might be regarded as a continuation of Act No. XXXV of 1857, entitled an Act for the levy of Port-dues in the Ports of Moulmein, Rangoon, Khyouk Phyoo, Akyab, and Chittagong. The Port of Bassein, to which the present Bill related, and which was also on the Eastern side of the Bay of Bengal, was excluded from Act XXXV of 1857, as, at the time the Act was passed, it was uncertain how far that Port would be resorted to by Traders and Merchants, and what is known as the Harbour Act had then been extended to it. The

Bill "to establish a Duty of Excise on Salt manufactured in the Presidency of Fort St. George" be adopted.

Agreed to.

CIVIL PROCEDURE.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

NOTICES OF MOTION.

MR. HARINGTON gave notice that he would, on Saturday next, move the second reading of the Bill "for the levy of Port-dues in the Port of Bassein."

Also the first reading of a Bill for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons.

MR. SCONCE gave notice that he would, on the same day, move the first reading of a Bill to remove certain tracts on the Eastern border of the district of Chittagong from the jurisdiction of the tribunals established under the general Regulations and Acts.

Also the first reading of a Bill to amend Section VII Act XXI of 1856, by raising the rate of duty leviable on spirits manufactured at distilleries worked according to the English method.

INSPECTION OF MINES.

MR. SCONCE moved that a communication received by him from the Government of Bengal, relative to the preparation of a Bill for the inspection of mines, with certain correspondence bearing upon that subject, be laid down upon the table and printed. He said that some part of this correspondence related to the entertainment of armed men by the proprietors of Collieries in Burdwan, and another part to trials held by the Joint Magistrate of Raneegunge, in which a European British subject was implicated. It appeared that two persons alleged that they had been illegally seized, flogged, and detained; and one day, in August last, the Joint Magistrate proceeded in company with these men that they might show him the godown in which they said they had been confined. On arriving at the place one of the men pointed out a godown, the door of which was padlocked, and on further enquiry it was found that three other men were forcibly detained in that very place at the time. It also appeared that the European Superintendent of the Bengal Coal Company was implicated in the matter. How far and in what manner he was implicated, the correspondence would show; and he would only now say that the men referred to were released personally by the Joint Magistrate, in the presence of the Superintendent, from a godown belonging to the Coal Company. He made this statement partly with reference to the cases to which this correspondence related, and partly with reference to other cases of outrage which, from recent trials in the Supreme Court and in the Mofussil Courts, might be said to have been judicially ascertained to have been committed by British subjects in the Mofussil. He would remind the Council that a Despatch had been received from the Honorable the Court of Directors, which was read to this Council on the 21st November 1857, and in which the Executive Government were called upon, before making British subjects amenable to the jurisdiction of the Mofussil Courts in Criminal matters, to consider the question and report for the approval of the Home Government any measure which they might propose for carrying that object into effect. It was his purpose on that day week to ask the Honorable Member opposite (Sir Bartle Frere) whether, with reference to that Despatch, the Executive Government had under consideration any enactment on the subject. For his own

missioner of Pegu and Governor General's Agent now reported that it was evident that, for some years to come, the Port of Bassein must be the principal mart of the district, and he proposed therefore that the levy of Port-dues, at the rate of four annas per ton on all vessels entering the Port, should be authorized by an Act of the Legislature, that being the rate at which Port-dues were now taken in the Port under an order passed when the Province became British territory. In proposing the continuance of this rate, the Commissioner observed that it would not cover the expenses incurred, but he hoped that, as the trade extended, it would prove sufficient for the purpose. He went on to say that Bassein, unlike Rangoon, not being a Port for general traffic, but the trade there being confined in a great measure to a single article, namely, rice, it was not deemed advisable to raise the rate of Port-dues to the level of the rate at Rangoon, but he considered it probable that hereafter, when a Light-house was built on the Alguada Reef, some increase in the rate might be properly adopted. He would only further remark that, in the framing of the present Bill, the wording of Act XXXV of 1857 had been followed.

The Bill was read a first time.

MARRIAGES (CHURCH OF SCOTLAND).

MR. SCONCE moved the second reading of the Bill "relating to the solemnization of Marriages in India by ordained Ministers of the Church of Scotland."

The Motion was carried, and the Bill read a second time.

CIVIL PROCEDURE.

MR. HARINGTON moved that the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

LAND FOR PUBLIC PURPOSES.

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

MR. LEGEYT said, it was not his intention to offer any opposition to the Motion just made for going into Committee on the Bill, but he reserved to himself the right of moving any amendment before the third reading of the Bill, in consequence of the Petition which had this day been presented from the Bombay Association, and which had, on his motion, been ordered to be printed. He should have preferred the consideration of the Bill to be postponed until he had had time to consider the Petition. It was possible that some amendments might require to be made in consequence of that Petition, and he was not at present prepared to move those amendments, as the Petition had been received only yesterday.

THE CHAIRMAN said, as the Council had adopted the Motion for the printing of the Petition, it seemed to him reasonable that the consideration of the Bill should be postponed. It would be almost useless to consider the Petition after the Bill had been settled in Committee. For his own part, he thought it would be better if the Motion for going into Committee were deferred.

MR. SCONCE acquiesced, and the consideration of the Bill was accordingly postponed till Saturday next.

CATTLE TRESPASS.

MR. SCONCE postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle.)"

EXCISE DUTY ON SALT (MADRAS).

MR. FORBES moved that the Report of the Select Committee on the

part, he conceived that, if we were to suppose the passing of any permanent law to be at any early date improbable, taking the basis of the present law, some temporary enactment might be adopted by this Council which would give greater security to life and property, and afford protection against outrages perpetrated by British subjects in the Mofussil. He should now only move that the communication to which he had referred be printed.

Agreed to.

VILLAGE WATCHMEN (BENGAL).

MR. HARINGTON moved that a communication, received by him from the Government of the North-Western Provinces, be laid upon the table, and referred to the Select Committee on the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the territories under the Government of the Lieutenant-Governor of Bengal."

Agreed to.

The Council adjourned.

Saturday, January 21, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. B. Harington, Esq.,
Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	Hon. Sir C. R. M. Jackson, and
	A. Sconce, Esq.

EMIGRATION (CAPE OF GOOD HOPE).

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding a correspondence regarding a proposal to authorize the Emigration of Indian Laborers to the Colony of Natal, in the Cape of Good Hope.

THE VICE-PRESIDENT moved that the communication be printed.

Agreed to.

REGISTRATION OF ASSURANCES.

MR. FORBES presented the Report of the Select Committee appointed to take into consideration a communication from the Madras Government, suggesting improvements in the present system of registering Assurances, and submitting the draft of an Act "for affording protection to rights on property."

SUCCESSIONS.

MR. HARINGTON moved the first reading of a Bill "for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons." He said the immediate occasion of the introduction of this Bill was a doubt which had been expressed by the learned Advocate General of Bengal in respect to the operation of Act XX of 1841, and of that Act as modified by Act X of 1851, in those parts of the British Territories in India which had been acquired subsequently to the date of the passing of the Act first mentioned. The communication from the learned Advocate General, in which this doubt was suggested, would be printed as an annexure of the Bill, and would be in the hands of Honorable Members before they were asked to give their assent to the second reading of the Bill. The Bill would remove all doubts on the point discussed in Mr. Ritchie's note by making the law general. It further provided for the grant of certificates of administration in cases falling within the provisions of the Bill by all district Courts, which it defined as the principal Court of original jurisdiction in the zillah or district. In districts to which the jurisdiction of the Sudder Court did not extend, the appeal from the order of the district Court would lie to the highest Civil Court of appeal. These were the chief points in respect of which fresh legislation was considered desirable. But a modification of the existing law being found necessary, it was thought that it would be better to take advantage of the present opportunity to consolidate all the

laws now in force relating to the grant of certificates of administration of the personal estate of deceased persons, and the Bill therefore proposed to consolidate as well as to amend those laws. The Acts proposed to be repealed and consolidated were Act XX of 1841, Act VIII of 1842, Act X of 1851, and Act VIII of 1854. In consolidating these laws into a single enactment, some alterations had been introduced other than those already mentioned; but these were entirely verbal, and as none of them were of any importance, he did not consider it necessary to occupy the time of the Council by noticing them in detail.

The Bill was read a first time.

CHITTAGONG DISTRICT.

MR. SCONCE moved the first reading of a Bill "to remove certain tracts on the Eastern border of the district of Chittagong from the jurisdiction of the tribunals established under the general Regulations and Acts." He said, the Bill which he had the honor to introduce was proposed at the urgent requisition of the Bengal Government. The tract of country which it was proposed to separate from the administrative action of the ordinary law lay on the Eastern frontier of the Chittagong district, a frontier extending over nearly a hundred and fifty miles. The country comprised in this tract consisted in itself of successive hill ranges and almost unimpenetrable forests. Within this tract there was scarcely any level country, and, though peopled by a certain class of inhabitants who were our subjects, and paid revenue to Government, they were, comparatively speaking, strangers to that portion of the district which had always constituted the estates from which the permanently settled revenue was derived. But it was not so much with respect to the tract itself, as to the depredations it was exposed to from the savage tribes living or supposed to live on its furthest verge, that legislation on the subject was necessary. How far that tract extended eastward was almost unknown. In some parts it might be for fifty miles, and in others less. At any rate, so far as he knew, no one had ever attempted to define the line of separation between the Territories of the British Government and those of any adjoining state or tribe. Nor were the tribes who occupied the farther frontier personally known to us. For a series of years those tribes, known only by their barbarities, not only throughout the Chittagong frontier, but to the southward within the limits of the Province of Arracan, and also to the north, had inflicted on our people grievous injuries. They would come in great numbers and unexpectedly attack a village in the midst of their peaceful avocation, slaughtering several of the inhabitants, carrying away others as slaves, and plundering and destroying their property. On one occasion, when he was Magistrate of the Chittagong District, a case occurred in which the attacking party consisted of a thousand men. Of the villagers whom they attacked, twenty-one men, women, and children were killed, and thirty-six women and children carried off, and the village was plundered and burnt. That was only one instance within his knowledge, and happened about twenty years ago But he knew of many others, and he understood that similar outrages were, year after year, continually perpetrated.

The first object of the Bill, therefore, was, if possible, to strengthen the hands of Government, by enabling it to frame Regulations to meet such cases as the exigency appeared to demand. With respect also to the people occupying the tract which it was proposed to place beyond the jurisdictions ordinarily exercised in the district, it was considered by the Government that they were but ill suited to the rigid rules of our ordinary laws and to the organization prescribed by these laws. Upon this point also he could not hesitate to give his assent to the project, though, to some extent, he took exception to the views of the Government of Bengal as to the course to be adopted in the abolition of the

present system. It would be seen from the annexures to the Bill, that the Government proposed to rely mainly on the assistance of the Hill Chiefs. But he could conceive circumstances to arise in the ordinary supervision of offences in which the assistance expected from Hill Chiefs would not be adequate to the investigation of those offences. At the best, however, his view of the matter would entail on the Government the necessity of introducing establishments independent of and in addition to the jurisdiction proposed to be vested in the principal men among the Hill people.

The particulars of the Bill had been drawn very much after the model of the Sonthal Districts Act. By its operation the tracts referred to would be withdrawn from the jurisdiction of the established Civil, Criminal, and Revenue authorities, and from the scheme of procedure by which those authorities were guided.

Provision was also made to enable the Government to provide for the administration of the country by the appointment of certain Officers, and the Government would be able to direct appeals from the decisions of such Officers to be heard by any of the regular Courts of the District. With these remarks he begged to move that the Bill be read a first time.

The Bill was read a first time.

ABKAREE REVENUE (BENGAL).

MR. SCONCE moved the first reading of a Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal)." He said, it was proposed by this Bill to amend Section VII of that Act so far as it limited the duty leviable on spirits manufactured at distilleries worked according to the European method, from one to three Rupees. He might say that the Law recognised broadly two classes of spirits, one manufactured after the European process, and the other after the country process. The duty on spirits distilled at European distilleries was, by law, fixed at one Rupee a gallon, while that on country spirits was left to the discretion of the Revenue authorities. Lately the Government had thought fit to raise the duty on country spirits from eight annas to one Rupee four annas the gallon; and as country spirits were very much inferior, both in strength and quality, to rum, which was the only liquor manufactured after the European method, it was obviously to be expected that the duty leviable on rum would be diminished if no attempt were made to raise the duty now leviable to a higher rate. It had also been considered that, as the duty leviable on imported spirits was raised from one Rupee eight annas to three Rupees a gallon, so, upon a corresponding principle, the duty on spirits of a similar quality manufactured in this country should be equalized. He himself attached less importance to the latter ground, as the quantity of rum now imported was very inconsiderable. In the course of the years 1857 and 1858 only 1,120 gallons were imported. Last year the importation of rum amounted to 3,392 gallons. But as the importation of rum into this country was so extremely limited, it was obvious that the Home manufacture could scarcely be said to be affected by the small quantity imported. He found from the best data available to him that the average quantity of rum taken out from the distilleries, on an average of the last two years, amounted in round numbers to nine lakhs of gallons; but this quantity was not all dutiable. Nine lakhs of gallons on the whole were distilled, but nearly seven lakhs of this were supplied to the Commissariat Department free of duty for the consumption of European Troops. There remained only two lakhs of gallons on which duty was levied. But of this one-half was exported, and was therefore not to be reckoned, because on exportation draw-back was allowed, so that the revenue derived by Government was paid on only one lakh of gallons. Thus it appeared that, while the distilleries turned out nine lakhs of gallons, they were called upon to pay duty upon only one-ninth of

that quantity. One lakh of gallons at one Rupee a gallon necessarily yielded a revenue of one lakh of Rupees. The duty being raised, as now proposed, to three Rupees a gallon, would give a profit of two lakhs. On the whole, therefore, the increase to the public Revenue would be at least two lakhs of Rupees, probably more. He did not apprehend—whether with respect to the measure itself as an additional impost on spirits, or with respect to other proceedings with which the distillation of rum was so intimately connected—any objection being raised to this part of the Bill.

He had added to the Bill a Clause to amend Act XXI of 1856 in another respect. In the course of the discussion on the Opium Bill in 1857, it was proposed by the late Member for Bengal to remedy a defect in the Abkaree Act, which contained no express provision for the imprisonment of an offender in default of payment of fine. Upon that occasion it was thought inexpedient to retain a Section for amending the Abkaree Act in a Bill which was specially applicable to Opium. So far as he understood, however, from the debate which took place at the time, there was no objection taken to the principle of the proposal; and as now Act XXI of 1856 was in course of amendment with respect to Section VII, it seemed to him a suitable opportunity to amend the said Act in another respect. He observed that the penalties for offenders were of various grades—some not to exceed fifty Rupees, some up to two hundred Rupees, some to five hundred Rupees, and some one thousand Rupees. He proposed, therefore, to enact that, when the forfeiture did not exceed fifty Rupees the Magistrate might order imprisonment for two months, or when it did not exceed two hundred Rupees to imprisonment for four months, or when it exceeded two hundred Rupees to imprisonment which might extend to six months.

The Bill was read a first time.

MR. SCONCE moved that the Standing Orders be suspended, to enable him to proceed with the Bill.

MR. HARINGTON seconded the motion.

MR. LEGEYT asked, if the Honorable Member for Bengal intended to carry the Bill through its stages that day in the event of its passing a second reading, or if any time was proposed to be given for the consideration of the Bill before it was farther proceeded with.

MR. SCONCE said, he had no objection to postpone the second reading until next Saturday, on the understanding that the principle of the Bill was accepted to-day. His ground for asking the Council to do so was that it was proposed by this Bill to enable the Government to raise the duty on spirits manufactured according to the European method from this date, and a Clause was inserted in the Bill indemnifying the Officers of Government who should be concerned in giving effect to that measure in anticipation of the passing of the Bill. On that understanding he had no objection to postpone the further progress of the Bill to-day.

THE VICE-PRESIDENT said, he thought it was very hard that the Council should be called upon to pledge itself to the principle of the Bill at a moment's notice. But it appeared to him that there was a still stronger objection to proceeding with the Bill, inasmuch as the Bill not only sought to raise the duty on country spirits manufactured after the European fashion, but it also proposed to modify the penalties and punishments prescribed by the Abkaree Law. That Law had been in force for some time, and he saw no necessity for a suspension of the Standing Orders, with a view to proceeding at once with that part of the Bill which proposed to effect important changes in the penalties under that Law. Under these circumstances he felt compelled to say that, if the Honorable Member for Bengal insisted on pressing his motion, he (the Vice-President) would be under the necessity of giving his vote against it.

SIR CHARLES JACKSON said, he thought it very desirable that all financial measures of Government,

which affected the mercantile community, should be carefully considered. In the consideration of such measures the Council generally received valuable assistance from parties not Members of the Council, and as he could not say at present how far the Bill now proposed would affect commerce, he certainly objected to the Bill being further proceeded with to-day.

MR SCONCE said, with reference to the remarks of the Honorable and learned Vice-President, that he had no objection to strike out that portion of the Bill which related to the recovery of fines. With respect to the objection taken by the Honorable and learned Judge on his right (Sir Charles Jackson), he would remark that, though they had been sometimes told that they might not liken themselves to a greater Legislature, nevertheless, it might not be inexpedient to conform to the practice of the Imperial Parliament in such a case as the present. In England it was the practice for Parliament, by passing a Resolution, to affirm a duty which the Government might think fit to recommend, with a view to its being subsequently put into the form of a law. It was not held necessary for the Government to give notice of the terms of any such Resolution, nor, if the action of Government would thereby be fettered, so to receive the proposition as to constrain the Government to defer giving the proposed law effect from the date of its announcement.

As he said before, he was perfectly willing to abandon the second part, being fully sensible that it would be inexpedient to adopt a new law on the subject without its passing through all its stages. But it seemed to him that he was fully warranted in asking the Council to accept the principle of the first part of the Bill, and he had no reason to doubt that the Council would accept it. He had put this question to the Council on the understanding that the Bill should be in force from this date, and if afterwards the Council should see fit to depart from the terms, that indemnity would be given to those engaged in carrying it into force. Nevertheless, if this should be the general wish of the Council, he was not unwilling to defer the further consideration of the Bill.

The Motion to suspend the Standing Orders was then, by leave, withdrawn.

PORT-DUES (BASSEIN).

MR. HARINGTON moved the second reading of the Bill "for the levy of Port-dues in the Port of Bassein."

The Motion was carried, and the Bill read a second time.

LAND FOR PUBLIC PURPOSES.

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes);" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I provided as follows:—

"In the case of land being required for a Road, Canal, or Railway, when it shall be certified to the Collector or other Officer appointed as provided in Section III Act VI of 1857, that in conformity with the provisions of Section XXXIV of that Act, the intended line of the Road, Canal, or Railway has been surveyed and marked out by a trench or other land-marks, the Collector or other Officer shall cause a notice to be affixed in some conspicuous place or places upon the land at intervals of not less than one mile, and published by proclamation in the neighboring bazars and villages, intimating that the land about to be taken for a Road, Canal, or Railway, as may be, as already notified by Section II Act VI of 1857, has been marked out to the extent and within the limits to be specified in the notice, and that a detailed measurement of the land so marked out would commence from a time to be specified in the notice, and requiring all parties interested in the land to appear at a place mentioned in the notice, before him personally, or by agent, on the expiration of a specified period, not being less than fifteen days from the date of the publication of the notice, and state the nature of their interests in the land, and the amount and particulars of their claims to compensation for the same."

MR. LEGEYT moved the insertion of the words "and a survey or plan thereof has been completed" after the word "land-marks" in the 11th line of the Section. He said, the

object of this Bill, it would be remembered, was to expedite the giving over of land to Government when required for Railways, Canals, &c., and for that purpose to get rid of that provision in Sections III and IV Act VI of 1857, which required a detailed measurement of the land to be furnished to the Collecter after notice to the owner that the land had been surveyed and marked out. It appeared to him that the intended measure would be improved if some words to the effect proposed by himself were introduced after the word "land-marks." He had been induced to bring forward this amendment with reference to the Petition of the Bombay Association, presented at the last Meeting of the Council. It appeared to him from that Petition, that there was a feeling prevalent in Bombay that the Bill had for its object to do away with the specification of such property as might be standing upon the land required to be taken, as prescribed by the Section of Act VI of 1857 to which he had alluded. But such was not, he believed, the case, and he thought that, if his amendment were adopted, it would remove that misimpression, for the public would then see that all precautions for the protection of private rights now required by Act VI would be carried out under the present Bill.

MR. SCONCE said, he had no objection to the adoption of those words. They amounted to no more than the preceding words of the Section were intended to convey.

THE CHAIRMAN said, it rather appeared to him that the words were out of place, and that the object in view would not be gained by their insertion as proposed.

MR. LEGEYT said, he believed that, under Section XXXIV, the Collector or other Officer might enter upon the land required to be taken for the purpose of making a survey thereof, "and, in the case of a Road, Canal, or Railway, to set out the intended line thereof, and to mark such line by cutting a trench or placing land-marks, and where otherwise the survey cannot be completed and the line marked, to cut down and clear away any part of any jungle or tope of trees in the direction of the intended line." It appeared to him that there was an obscurity in the whole of the present Bill. He doubted very much whether the Bill would do any good at all. Looking at the Section of the Act from which he had just quoted, and as he understood from the papers which came before the Select Committee on the Bill, it was fully intended that the land should be completely and accurately delineated. It was with the view of satisfying the public that their land would not be taken until every precaution had been adopted that the "detailed measurement" was provided. If this would secure that object it was well. It appeared, however, from the Petition of the Bombay Association, that this was not understood. He was anxious, therefore, that this Section should be made as clear as possible, and he still believed that the words proposed to be inserted might have that effect.

After some further discussion the Council divided—

Ayes 2.	*Noes* 6.
Mr. Sconce.	Sir Charles Jackson.
Mr. LeGeyt.	Mr. Forbes.
	Mr. Harington.
	Sir Bartle Frere.
	Sir James Outram.
	The Chairman.

So the Motion was negatived.

MR. LEGEYT then moved that the words "together with a plan thereof" be inserted after the words "marked out," in the 23rd line of the Section. His object in wishing to introduce these words was to show that the land required would be well delineated and well described before it was taken out of the hands of the owner or holder.

THE CHAIRMAN said, this amendment would be equally nugatory. The Section under consideration, in which the words were proposed to be inserted, merely related to the issue of notice to the parties interested in the land of what was going to be done.

After some conversation, the amendment was negatived, and the Section was passed as it stood.

Section II (which provided how the time for the appearance of the parties was to be fixed) was passed as it stood.

Section III provided as follows :—

"When the detailed measurement of the land marked out as aforesaid shall be completed, the Collector or other Officer, at any time after the expiration of ten days following the period provided for in the above notices, may take immediate possession of the land so measured, or of any portion thereof, which shall thenceforward be vested absolutely in the Government free from all other estates, rights, titles, and interests. Provided always that on the date fixed in the notices directed in Section I of this Act to be served, the Collector or other Officer shall immediately proceed, in conformity with Section V and the following Sections of Act VI of 1857, to award the compensation due for the land marked out or taken, and shall pay the amount awarded, with interest, at the rate of six per centum per annum from the time when possession was taken."

SIR CHARLES JACKSON said, he must oppose this Section, and, if necessary, he would move that it be omitted from the Bill. After reading the enacting clause of the Section, he observed that this was a departure from the English Acts, which provided that either the payment or deposit of the purchase-money should be made before entry on the land. If this Clause was good in England, he saw no reason why it should not be adopted here, and certainly there was no complaint of the slow progress in Railway undertakings in England. The necessity for some provision on this point had apparently been felt by the Select Committee, who had added the following words to the Section :—

"And shall pay the amount awarded, with interest at the rate of six per centum per annum from the time when possession was taken."

He (Sir Charles Jackson) thought *six per cent.* a very small compensation to the owners of some descriptions of property, and what was the poor man who had nothing but his land to live on to do in the meantime between his ejectment from his land and the payment of interest. He considered the power given by this Section very objectionable, inasmuch as it would take away the only inducement that existed for a speedy settlement of claims of the landowners. If Government were allowed to take their own time to pay the amount of compensation, they might take a very long time to do so, and that would operate very injuriously on the owners of the soil.

Again, no plan or detailed measurement would give a specific description of all the items of value. Suppose a Railway to run into the Town of Calcutta, as in fact was now the case at Bombay, and Government entered under the Clause, and at once levelled and destroyed all buildings on the land, how could any jury estimate the amount of compensation to be awarded ? Would any plan afford a correct idea of the nature and value of such buildings, whether considered in an architectural point of view or otherwise ? Then, if Government should go into the country, and there take land in the same way, destroying all the land-marks, how would the several owners be able to particularize their respective property when the boundaries of their lands had been swept away, unless, indeed, the detailed measurement provided by the Act, with which he confessed he was not familiar, would obviate that difficulty. He considered this provision a most oppressive and unconstitutional measure.

MR. SCONCE said, the most important objection taken by the Honorable and learned Judge was that the provision in the Section under consideration was unconstitutional. He (Mr. Sconce) possibly might have had some difficulty in dealing with that argument, if the principle which the Section embraced had, in the first instance, been introduced by himself. But the truth was that he had followed the principle of the present law, a principle which had been adopted in 1857, when, unhappily, the Honorable and learned Judge was not a Member of this Council. He alluded to Section VIII Act VI of 1857, which provided that,

"When the Collector or other Officer has made an award or directed a reference to arbitration, he may take immediate possession of

the land, which shall thenceforward be vested absolutely in the Government, free from all other estates, rights, titles, and interests."

It might often happen that the compensation tendered by the Collector would be rejected by the owner. This might be on the very first day of his proceedings, and from the very fact of his offer having been rejected, and a reference to arbitration directed, the Collector was competent, under Section VIII of the Act, to take immediate possession of the land. Here, then, before any step at all was taken, and when on one side stood the Collector and on the other the occupant, neither of them agreeing to the terms of the other, the Collector was empowered, in anticipation of arbitration, to take immediate possession. He (Mr. Sconce) had proposed no new law. What was unconstitutional now was unconstitutional before. There might be delay in the action of the law, and the same or greater delay might take place in the passing of their award by the arbitrators, but that delay notwithstanding, the Legislature did not hesitate to give the Collector the right of taking immediate possession of the land.

The other objections raised by the Honorable and learned Judge were, *first*, the possibility of Government evading payment of the award made. There might be some force in this objection if Government would benefit by it; but he rather thought that it would be to the interest of Government, not only to pay the money quickly, but also to see the matter finally adjusted with as little delay as possible. If it were to be supposed that there would be any deliberate delay on the part of Government in the payment of money, he could conceive this to be no valid objection to the Section, as a still stronger Clause might be inserted, doubling the interest after a time that might be fixed, so as to ensure early payment. But no real objection could be based on the ground of possible non-payment.

Then again it was said that, by the removal of premises, all evidence of property was destroyed. On reference to the papers which had been printed in the annexure, it would be seen that the detailed measurement presented an ample and sufficient record of all the interests adhering to the land and of the rights of the parties concerned; and that it had been found that, in forty-nine cases out of fifty, claims were disposed of by the Railway Commissioner and his Deputy Collectors with reference to the papers before them. Practically, therefore, he saw no reason to apprehend that the adoption of the Section was calculated in any manner to affect the interests of the occupiers.

SIR BARTLE FRERE said, as he was not present at the discussion which took place at the second reading of this Bill, perhaps the Honorable Member for Bengal would be good enough to tell him the extent of additional speed that it was thought would be gained by the operation of this Bill in acquiring possession of land for public purposes. The Honorable Member had stated that the Section under discussion merely carried out the principle of the original Act. But he (Sir Bartle Frere) would remind his Honorable friend that there was this essential difference between the existing and the proposed enactments. Section VIII Act VI of 1857 provided that,

"When the Collector or other Officer has made an award, or directed a reference to arbitration, he may take immediate possession of the land, &c."

This implied that the Collector or other Officer had made up his own mind as to the compensation to be offered, or, that the order for a reference to arbitration had been passed before the original owner lost possession of his land. But the Section of the present Bill to which the Honorable and learned Member opposite (Sir C. Jackson) had objected, provided that,

"When the detailed measurement of the land marked out as aforesaid shall be completed, the Collector or other Officer, at any time after the expiration of ten days following the period provided for in the above notices, may take immediate possession of the land so measured, or of any portion thereof, &c."

This Section omitted all mention of any award of compensation, and merely stated that, after the land had been marked out, possession might be taken after a certain period. All who knew the way in which business was conducted, not only here but in England, ought to know that, when once the owner had lost possession of his land, very considerable difficulty would always be experienced in settling the amount of the purchase money. He hoped, therefore, that his Honorable friend would pardon him for observing that this Section introduced an entirely new principle. He (Sir Bartle Frere) thought that the Honorable Member had not quite met the objection of the Honorable and learned Member. At the same time he (Sir Bartle Frere) would be glad to know what was the additional speed or facility proposed to be gained by this Section, which was so much stricter than the Section of the original Act which it was intended to supersede.

MR. SCONCE said, he had no difficulty to answer the question as to the saving of time. It would be seen from the papers printed with the Bill, that the delay which formerly took place before possession of the land could be assumed amounted, on the whole, to seventy-four days; and by a modification of the system then in force, the time occupied was reduced to about sixty days. By the present Bill a notice of fifteen days was required to be given, followed by ten days for the completion of the detailed measurement. Therefore, in place of sixty days, land might be taken after about twenty-five days, making a saving of at least thirty days. Considering the limited portion of the year during which field operations could be carried on, it seemed very important that every facility should be given to enable the Railway Officers to assume possession of the land with the least possible delay.

As to Section VIII he was not unaware of what had fallen from the Honorable Member opposite (Sir Bartle Frere). It was his (Mr. Sconce's) intention fully to recognize the distinction drawn by the Honorable Member between that Section and the Section in the original Act. He had stated specifically that, according to the original Act, on the owner objecting to take the sum awarded by the Collector, the Collector should refer the matter to arbitration, and then take possession of the land. This was done, not on the arbitration being adjudged, but simply on the Collector directing a reference to be made to arbitrators. In the present Act, therefore, as in the Bill now before the Council, the land was permitted to be taken in anticipation of the award of compensation. In that sense the principle of the original Act had not been changed.

MR. HARINGTON said, he believed he was right in supposing that, if the Section under discussion were struck out, the Honorable Member who had charge of the Bill would consider it unnecessary to go on with it. The sole object of the Bill was to enable the Government to obtain possession of land required for any of the purposes mentioned in Act VI of 1857 on an earlier date than was practicable under the existing law. The principle of the Bill was therefore really involved in the present Section. In the debate which took place on the motion for the second reading, the Honorable and learned Judge opposite (Sir C. Jackson) took precisely the same objections to the Bill which he had urged to-day; but, after a very full discussion, the majority of the Council affirmed the principle of the Bill by consenting to its being read a second time. No alteration had since been proposed in the principle of the Bill, and, although the Select Committee had recommended the addition of certain words to the Section under consideration, their object was to benefit the parties to whose prejudice it was supposed that Section would operate, by requiring the payment to them of interest at the rate of six per cent. per annum on the sum awarded for their property from the time when possession was taken. Of course it was open to any Honorable Member to change his opinion at any stage of a Bill; but he must be allowed to repeat that the principle of this Bill, to which such

strong objections were now being made, had already been affirmed by the Council.

The Honorable Member for Bengal had clearly shown that, under Section VIII of Act VI of 1857, possession might be taken before a final decision was come to. As pointed out by the Honorable Member, if the parties did not agree as to the amount of compensation, instead of waiting for the award of the arbitrators, the Collector might at once take and give over the land for the purposes for which it was required. In the adjudication of such cases it was not stated that any difficulty had been experienced from the removal of buildings, trees, or crops. What difficulty, he would ask, would the Honorable and learned Judge opposite (Sir Charles Jackson) feel if he were called upon to decide cases of this nature in his own Court, because of such removal? Of course he would expect the best evidence to be given on both sides as to the existence of any buildings, trees, or crops on the ground, and as to the value of the same; and with this evidence before him he would proceed to dispose of the matter in dispute, without himself visiting or inspecting the premises. That was what would be done under the Bill as it stood. He (Mr. Harington) saw no reason to apprehend that any difficulty would be felt in coming to a fair and equitable settlement. Then, with regard to the delay which it was feared might take place on the part of the Officers of Government in disposing of the cases if this Bill passed into law, he did not think that the Council had any right to assume that there would be wilful delay. No doubt, the Officers of Government had, in most districts, very heavy duties to attend to, but he believed that they were generally most assiduous in the discharge of their duties, and so far from evincing any disposition wilfully to neglect cases of this kind, he felt sure that the contrary would be the case, and that there would be every desire to dispose of the cases without any delay that could be avoided. He should vote for the retention of the Section.

Mr. Harington

SIR BARTLE FRERE said, he would make one observation with regard to what had fallen from the Honorable Member for Bengal, as to the delay which it was expected to obviate by the passing of this Act. His Honorable friend would forgive him for reminding him that the Railway officials did not proceed to take possession of the land mile by mile. On the contrary, as soon as the general direction of the line was determined, a large body of Surveyors was spread out along the whole length of the line, and the work of marking out the ground to be taken, and endeavoring to get possession of it, proceeded almost simultaneously often along a distance of a great many miles. Every one who owned land to be taken naturally stood by his own property. The Collector, however anxious to see justice, could only be in one place at a time, and that place would generally be his Cutcheree, at a considerable distance perhaps from the line. The sole security for justice being done, and the land fairly paid for, was the present provision that the land should not be taken till the Collector had at least ascertained what it was fair to offer. If we once allowed that the delay of thirty or even sixty days was a serious objection, so serious as to require legislation, what could we say of that class of delays for which the Government and Railway officials were alone responsible; such, for instance, as the settlement of the general direction of the line? Admitting that the proposed Bill would expedite matters to the full extent expected, he did not think a case was made out for such a serious infringement of the rights of property.

With regard to what had fallen from the Honorable Member for the North-Western Provinces, he would remark that the Collector, when he found the parties unwilling to accept the compensation he offered, and determined to refer the matter to arbitration, would have to act under a heavy responsibility, and would naturally take care that nothing was done to the land which would be an obstacle to his proving before the arbitrators that his view of its value was a just one, and would so

far aid the owner to prevent the evidence of his rights from being destroyed in the manner to which the Honorable and learned Judge (Sir C. Jackson) had alluded. This was always quite sufficient to prevent the Collector from acting precipitately or harshly, and he (Sir Bartle Frere) knew that, in practice, the Collector, in all such cases, took good care to prevent the destruction of buildings or other property which would serve as evidence to guide the parties who would have to award the compensation. He (Sir Bartle Frere) could fully confirm all that the Honorable Member for the North-Western Provinces had said, that there was little fear of any wilful delay on the part of Government in paying for land taken by them. He (Sir Bartle Frere), however, referred to the delay which naturally and inevitably took place in the transaction of public business. The Railway Authorities and the Collector were naturally and properly anxious to proceed with that portion of the work—the marking out and construction of the line—which could best be done during the dry working season, and would not unnaturally, if the proposed Bill became law, defer the settlement of compensation for future consideration on the close of the working season. They all knew how much the Collector was hampered and harassed by a multitude of persons to whose business he had to attend, and there could not be a doubt but that he would be obliged to put off, from day to day, numerous claimants for compensation, without any intention on his part to cause any delay in settling their just claims.

MR. LEGEYT said, he professed he was not able to vote for this Section. He did not really see that this Bill was much wanted. It appeared to him that Act VI of 1857 contained all that was really necessary.

THE CHAIRMAN said, when this Bill was brought before the Council, on the occasion of its second reading, he recorded his vote against it, and he saw no reason now for changing his opinion. Under the law as it stood in 1842, whenever the Officer appointed by Government for the purpose recorded his opinion that the land in dispute was required immediately for a public purpose, he was empowered to take immediate possession of it on behalf of Government, leaving the amount and distribution of the consideration to be paid for it, if not agreed to by private bargain, to be afterwards ascertained. That was the law as it stood in Act XLII of 1850. Act VI of 1857 repealed that Act; and by Section VIII it was provided:—

"When the Collector or other Officer has made an award or directed a reference to arbitration, he may take immediate possession of the land, which shall thenceforward be vested absolutely in the Government, free from all other estates, rights, titles, and interests."

The land would require to be inspected and valued before an award could be made, or before reference to arbitration. But, as he understood, the Honorable Member for Bengal wished to get rid of delay. He (the Chairman) did not know what the delay was that the Honorable Member wished to get rid of. If land was required to be taken before an award or before a reference to arbitration, it was but reasonable that some record should be kept, by means of which Government might know precisely what buildings, tanks, or trees, had originally stood upon it. He quite agreed with what had fallen from the Honorable Member for Bombay, and would proceed to show how it was fully confirmed by the opinion of the Railway Commissioner, as contained in a report submitted by him to Government in 1851. Mr. Lushington said:—

"12. But in the case of the Railway it was altogether different. The loss attendant on keeping the Railway establishment unemployed, and the risk of losing the cold season for the embankments, rendered it essential that the work should be commenced at the earliest possible date; whilst it was obvious, from the nature of the country through which the Railway was to run, from the density of population, and the large number of the holdings, that the provisions of Regulation I of 1824 could not be carried out so as to ensure proper progress to the works. And it was consequently clear, when Act XLII was passed, that the question for consideration was not whether the lands should or should not first be taken into the possession of Government, and the claims left for after determination, but simply at what point of my proceedings it was desirable to make over the lands to the Railway Company.

"13. It was urged by the Railway Officers that possession should be given immediately after the delivery of the Surveyors' plans. I was assured that the plans, as in England, would represent accurately every feature of the country; that the boundaries of each holding, however small, would be clearly and distinctly defined; and it was argued that, with such plans, and a list of the proprietors before me, there could be no difficulty in determining the claims, either by private bargain or by arbitration in the usual course of law, although the boundary marks might, meanwhile, have been obliterated by the excavation of earth, or by the construction of the road.

"14. Experience, however, speedily removed this impression from the minds of all. The examination of the first plan showed that, for all practical purposes in respect to the decision of claims, it was next thing to useless. It professed to exhibit the boundaries of the different Mehals; but it did this, even, but partially. The main features of the country and the visibly defined boundary marks alone were given. There was no account whatever of intermediate tenancies, or of the holdings of the occupants of the lands, or of the property upon the lands; and the Railway Officers, when pressed for further information on these points, at length stated that it had been found to be impossible for the Surveyors, with their limited knowledge of the tenures and the people of the country, to ascertain the boundaries or sub-divisions of the smaller holdings, or even to obtain a list of the names of the occupants.

"15. This was no more than I had expected. I could not believe that the maps and lists of the Surveyors could be made to exhibit all the information required. There were, in some of the Hulkas, hundreds of huts and houses, and thousands of trees to be accounted for; the rights of Zemindars, Putneedars, Mouroosee Ryots, and other parties possessed of a permanent interest in the soil required to be defined; the number of trees and the description of crops upon the fields were to be entered, and when, in addition to all this, it was necessary, before the claims could be adjusted, to divide nearly every claim into two or three distinct parts, on account of the division of the lands into permanent and temporary occupation, which would necessitate separate adjustments on different principles, in each case in which the lands of any one might be situated partly in the lands for temporary, and partly in the lands for permanent occupation; I felt fully satisfied that nothing short of a detailed native measurement, under the supervision of the most able and trustworthy Deputy Collectors available, would ensure a proper definition of the various interests, and a fair adjudication of the claims."

He (the Chairman) would proceed to show what became of the claims. The Railway Commissioner commenced by saying that,

"By the end of May, about 33 miles of the line had been made over to the Railway Company, and I was then in a position to enter upon the adjustment of the claims upon the land that had been occupied in perpetuity;"

So that it would appear that land was given to the Railway Company, and no steps were taken for the adjudication of claims till some time afterwards. In paragraph 38 the Commissioner proceeded to show the practice of the Deputy Collectors in the adjustment of claims. He said,

"In the first instance they were to issue notices for the parties to attend upon them at a particular time and place for the purpose of recording their assent or otherwise to the terms that might be offered to them, and for the production of such proofs as they might possess of the value of the property taken into the possession of Government. On the parties attending their proofs were to be demanded, and their documentary evidence filed with the case. An enquiry was then to be made as to the manner in which missing trees, &c., removed during the cutting of the centre line, had been disposed of: and, in the event of its appearing that they had been taken by the parties themselves, they were to be required to strike them out of their demand; if not, allowance was to be made for them in the account. An estimate of the value of the lands or other property was then to be made from the statements of rates furnished from this Office. If the land was situated within villages for which rates were given in my list, those rates were to be taken as the basis of calculation; if not, the estimate was to be formed either from the rates given for villages in the immediate neighbourhood, or from the average rates of the Pergunnah as given in the lists, according as the one or the other might, in the Deputy Collector's opinion, be most applicable; and the sums obtained from these rates were to be entered as the computed value of the gross rent of the land. From this amount the estimated amount of the expenses of collection was then to be deducted, and the balance was to be multiplied by 20 as an estimate of the 'fair value' of the lands, supposing them to be lakhiraj. When this was done, the value of the property excluded from the rent thus estimated was to be calculated at its market value from the price of timber, the annual value of fruit trees, the cost of building and materials, and from the general condition of the property, and when this had been done, the value estimated to be paid for the two properties were to be added together, and the Deputy Collector's opinion formed as to its being such as could be considered a fair value for the whole property.

"Should the Deputy Collector, on this review, see reason to suppose the estimate to be too high, he would of course reduce it to what might appear to be fit; if not, he was to announce the result of his estimate to the claimants, and offer the terms for their acceptance.

"Should they object to the value, and it appeared to the Deputy Collector that they had reason for complaint, such an alteration was to be made in the terms as might appear to be right; if not, he was to inform them, after due consideration, that he saw no ground for change, and if, after a second explanation of his views, the parties still refused to come to terms, the case was to be set aside for arbitration.

"If, on the other hand, the Deputy Collector admitted the propriety of the objections urged, or if the claimants, on hearing the Deputy Collector's statement of his views, consented to abide by the judgment expressed as to the value of the property, the Deputy Collector was to cause them to execute a Deed of Agreement, and set aside the case, with a full record of his proceedings, as a case which he considered fit for confirmation.

"In cases of dispute, where the whole or part of the property might be claimed by adverse parties, such dispute was to be considered a bar to the adjustment of the case by private bargain, and it was only necessary in such cases for the Deputy Collector to record his opinion of the value of the property and the circumstances which prevented the adjustment of the claims."

The Railway Commissioner concluded his observation on this part of his report, by saying :—

"The decision of the claims to be referred to arbitration will be allowed to lie over until the enquiries in respect to the temporarily occupied lands are completed, when the Deputy Collectors engaged in those enquiries will be appointed to act as arbitrators on behalf of Government. The parties concerned have less cause than any others to complain of delay, inasmuch as they have all refused fair and liberal terms."

In these observations he (the Chairman) could not agree. No doubt the Commissioner believed that the terms offered were fair and liberal. But that was the very question at issue, namely whether the terms were fair and liberal. The Commissioner proceeded to say that the adjustment of claims—

"Was not done this year until the measurements had advanced sufficiently to give ample work to the contractors. I think, however, now that the system of adjustment is understood, that there will be no difficulty in so open a country as that between Pundooah and Raneegunge in carrying on the adjustments at the same time with the measurements almost from the commencement of the operations."

This was exactly what was required by the present Act, and it appeared to him (the Chairman) that the experience of the Honorable Member for Bombay had been fully borne out by the practice in this Presidency. In his (the Chairman's) opinion, previously to the assumption of the land, either the purchase-money should be paid, or the matter put in train towards adjustment.

MR. SCONCE said, he so entirely agreed in the remarks made by the Honorable and learned Chairman, with reference to the greater part of the extracts which he had read to the Council, that he (Mr. Sconce) had every hope of carrying the votes of the Council with him. The first and most important portion of the extracts referred to the necessity of securing a measurement of the land in addition to the plan of the Railway Surveyors. Now this necessity he (Mr. Sconce) fully recognized, and it was the express object of the present Bill to provide that, after any section of the line of Railway had been marked out and surveyed, a detailed measurement should be undertaken in the very manner and for the very object contemplated by the Commissioner in the Report of 1851. Then as to delay in adjudicating claims to compensation, he had no excuse to make for it, nor was delay in any way promoted by this Bill. On the contrary, the Bill required an award to be pronounced at the earliest possible period, and as the payment of interest ran against the Government, so far this obligation was calculated to expedite a decision. The third point on which he (Mr. Sconce) desired to say a few words, referred to some remarks of the Commissioner as to parties rejecting a fair and liberal offer. He (Mr. Sconce) agreed with the Honorable and learned Chairman that parties were not to be blamed for refusing the compensation offered, for the law empowered any occupier of land to require his claim to be determined by arbitration, and he was under no obligation to abide by the offer of the Commissioner. But in truth nothing in the present Bill tended to impair the right which, in this respect parties possessed under the present Act.

The question being put, the Council divided—

Ayes 3.	Noes 5.
Mr. Sconce.	Sir Charles Jackson.
Mr. Forbes.	Mr. LeGeyt.
Mr. Harington.	Sir Bartle Frere.
	Sir James Outram.
	The Chairman.

So the Section was negatived.

MR. SCONCE then moved that the further consideration of the Bill be postponed.

The Motion was carried, and the Council resumed its sitting.

CATTLE TRESPASS.

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle);" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to III were passed as they stood.

MR. FORBES said he wished to introduce a new Section after Section III. Those Honorable Members who were present at the discussion which took place in the Select Committee on the Madras Police Bill, will recollect that that Bill originally contained a Clause which provided that Section IV Act III of 1857 should be read as if the words "District, Subordinate" and "Village Inspectors" were respectively substituted therein for the words "Magistrates" and "Heads of Police." It was considered at that time that some inconvenience would be felt by the insertion in a Bill relating to the Madras Police of a Clause amending or explaining the Cattle Trespass Act, and that the alteration would be better made in the Bill to amend Act III of 1857, which was then before the Council. He now therefore moved the introduction of the following new Section:—

"Section IV of the said Act shall be read throughout the General Police District of the Presidency of Madras, as if the words 'Village Inspectors' were substituted for 'Heads of Villages.'"

Agreed to.

Section IV and the Preamble and Title were severally passed as they stood, and the Council having resumed its sitting, the Bill was reported.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved that a Petition from the Inhabitants of Bombay, praying for the introduction into the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the Town of Bombay,)" of a Clause exempting the horses and ponies kept in the Pinjrapole or refuge for decayed and worn-out animals, be laid upon the table and printed.

Agreed to.

MARRIAGES (CHURCH OF SCOTLAND).

MR. SCONCE moved that the Bill "relating to the solemnization of marriages in India by ordained Ministers of the Church of Scotland" be referred to a Select Committee consisting of the Vice-President, Mr. Harington, and the Mover.

Agreed to.

PORT-DUES (BASSEIN).

MR. HARINGTON moved that the Bill "for the levy of Port-dues in the Port of Bassein" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

BRITISH SUBJECTS.

MR. SCONCE said, he rose with the permission of the Council to put the question of which he gave notice that day week. He hoped that it would not be considered a mere matter of curiosity that induced him to enquire whether the Executive Government were prepared to submit any project of law with a view to making British Subjects amenable to the jurisdiction of the Mofussil Courts in

Criminal matters. He himself entertained a strong opinion as to the necessity of some legislation on the subject. That day week he alluded to a Despatch from the Honorable Court of Directors, in which it was suggested that legislation in the matter should, for a time, be suspended. But, as he understood, it was not in any sense the intention of the Court of Directors that so important a question—a question in which the necessity for legislation had been admitted—should be altogether laid aside; and it seemed to him, looking to the importance of the question and to the various projects of law bearing upon the subject which were now under the consideration of the Legislature, that the Council should have some assurance that they would, at no long date, be called upon to consider whether a law of the nature to which he had alluded should not be passed. In the Despatch to which he had referred he found these words:—

"Considering, however, the great importance of the question of making British Subjects amenable to the jurisdiction of the Mofussil Courts in Criminal matters, and the interest it has already excited in this Country as well as in India, we think that legislation upon that point had better be postponed until the question has been referred to us (accompanied by a statement of your views in regard to it) and a measure for carrying that object into effect has received our approbation."

When he first spoke on this matter, he ventured on his part to say that, supposing that permanent legislation was to be for some time deferred, possibly some temporary law might be well worthy the attention of the Legislature which should be calculated to remedy the defects in the existing law, and he spoke of the possibility of a law being passed, based upon the present law. His meaning was that possibly the powers of the local Magistracy might, in some respects, be strengthened, and that in addition to this some new tribunals might be erected for the purpose of taking cognizance of the more aggravated classes of offences committed by British subjects in the Mofussil; but that at the same time in all cases the jurisdictions vested in the Courts constituted by Her Majesty's Royal Charter should be preserved for all proper purposes of direction and supervision. Supposing always that permanent legislation on this matter would be protracted, he conceived that a temporary law, drawn in the form at which he so shortly glanced, would not be considered opposed to the views expressed in the Despatch above quoted; but, be that as it might, what he should be glad to know was whether the Executive Government have had or have any project of law in contemplation with a view to the extension of the jurisdiction of the Local Courts in Criminal matters over European British subjects.

SIR BARTLE FRERE said, he had made every enquiry on the subject of the question which his Honorable friend had just put to him, but he regretted that he had very little information to communicate, beyond what was already before the Council; and he hoped that the Honorable Member would acquit him of merely repeating what was already well known, if he proceeded very briefly to recapitulate what had been done on this question, with a view to show how the matter now stood.

It was one of the objects of the framers of the Charter Act of 1833 that

"No person whatever should, by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts in India."

This was a leading principle of the great men who passed that Act, and from that day until very recently he need not remind the Council that it had been the constant object of those who directed the legislation of this country to pave the way for carrying out that principle. As a necessary preliminary, the Law Commission, of which Mr. Macaulay was the first Member, addressed itself to the preparation of one uniform Code of Criminal Law and of Criminal Procedure applicable to all Courts. He did not think that from 1833 to 1857 there had been much variation in the views of those who

directed the legislation of this country. It would be in the recollection of the Council that, in 1856 and the early part of 1857, the subject was discussed with considerably greater interest than before, and a very strong opposition was organized both here and at home, against the passing of any Criminal Code or Code of Procedure which should render European British subjects liable to be tried in any Courts but those established at the Presidency Towns. It was in August 1857, after the out-break of the mutinies, that the Despatch to which the Honorable Member for Bengal had alluded, was sent out to this country. As the Despatch was a very brief one, and its exact wording illustrated the present position of the question, he would, with the permission of the Council, read the whole of it, which was as follows:—

"1*st.* By our Legislative Despatch No. 2, dated 4th February 1852, we authorized you, 'if you should see fit, to proceed to pass a Law for giving effect to the Penal Code, as it may be finally arranged by you, with the concurrence of Mr. Peacock.'

"2*nd.* By our Judicial Despatch No. 40, dated 19th September 1856, we also authorized you to bring before the Legislative Council, without further reference to us, a measure for giving effect to the recommendations of the Indian Law Commissioners in regard to Procedure, with such alterations and modifications as you might consider necessary, with a view to their adaptation to the Courts of the East India Company.

"3*rd.* We observe from the proceedings of the Legislative Council recently received, that the Penal Code and Codes of Procedure are now under their consideration.

"4*th.* According to the Penal Code, the punishment for murder is death; and by the 8th Rule at page 96 of the First Report of the Law Commissioners, it is provided that 'no person whatever shall, by reason of descent, be in any Criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts.'

"5*th.* Should these provisions be enacted as they now stand in the proposed Codes, their effect will be to render natural-born subjects of Her Majesty subject in capital as in all other cases to the jurisdiction of the Courts of the East India Company.

"6*th.* To enact such a law, however, would be beyond the power of the Governor-General in Council, without the previous sanction of the Court of Directors. The sanction already given in general terms to pass the Codes, we consider to be insufficient to meet the specific conditions of the law in regard to the infliction of capital punishment upon British subjects; and the object of our present Despatch is to supply the omission in our former Despatches, by suggesting that the Clause giving jurisdiction to the Mofussil Courts over British subjects should be followed by a proviso, to the effect that such persons, when charged with capital crimes, shall be tried as heretofore by Her Majesty's Supreme Court of Judicature. Considering, however, the great importance of the question of making British subjects amenable to the jurisdiction of the Mofussil Courts in Criminal matters, and the interest it has already excited in this country as well as in India, we think that legislation upon that point had better be postponed, until the question has been referred to us (accompanied by a statement of your views in regard to it) and a measure for carrying that object into effect has received our approbation. The reference, however, need not delay the passing of the much needed Legislative measures for the improvement of the existing procedure of the Civil and Criminal Courts."

3 and 4 Wm. IV, c. 85, s. 46.

These were the views of the Court of Directors as communicated to this Government in the Despatch which he had just read, and which was dated the 19th August 1857, and as subsequently communicated to the Legislative Council in November of the same year. It was hardly necessary for him to state that, at the time this Despatch was received, we had entered upon an entirely new phase in the aspect of Indian affairs, very great excitement prevailed both in this country and in England, and with regard to any plan which should subject British-born subjects and Natives to the same Courts and modes of procedure, a very great alteration had taken place in public feeling, which was shared even by many persons who were entitled to be classed amongst the most philanthropic well-wishers of India. Since the suppression of the Mutinies another great change had taken place in the circumstances affecting this question, owing to the presence of large numbers of Europeans in this country, some of whom were less guarded in their conduct than could be desired, and there were symptoms of an alteration in public feeling which might tend to bring back public opinion nearer to what it was before the Mutinies commenced. As the Honorable Gentleman had remarked, the subject was not one

which could be laid aside or lost sight of, and with a view to satisfy him that it was not forgotten by the Home authorities, he would read an extract of a Despatch from Lord Stanley on the subject, the greater part of which had already been communicated to the Legislative Council. The Despatch was dated the 12th May 1859, and concluded as follows :—

"I have in conclusion to request that you will give me early intimation as to the progress made by the Legislative Council in revising the Penal Code and the Code of Criminal Procedure, and as to the measures proposed to be adopted in regard to them when the revision shall have been completed."

It would, he (Sir Bartle Frere) thought, be evident from the passage which he had quoted, that the question was still under consideration; and from the character of those in England who had their attention directed to the subject, among whom he need not remind the Council were some of the eminent and learned men who had preceded the Vice-President on the Bench of the Supreme Court (Sir Edward Ryan, &c.), he trusted the Council would agree with him that the consideration of the question could not be in better hands. The Honorable Member for Bengal was quite justified in agitating the matter and wishing that the present state of things should not be allowed to continue. But he (Sir Bartle Frere) hoped that his Honorable friend would acquit him of any intention to dictate to him or fetter his action in the matter if he ventured to point out that the matter was not one which could be properly dealt with at a time of much public excitement, and that it was not desirable or expedient, from such isolated cases as those to which the Honorable Member had referred, to hurry legislation on the subject, but that the better course would be, to leave the question to come forward in its natural course after the Codes had been laid before the Home Government.

NOTICES OF MOTION.

MR. HARINGTON gave notice that he would, on Saturday next, move the first reading of a Bill to amend the Articles of War for the Native Army.

Also the first reading of a Bill relating to the Transportation of Convicts.

The Council adjourned.

Saturday, January 28, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. Forbes, Esq.,
Hon. Sir H. B. E. Frere,	Hon. Sir C. R. M. Jackson,
Rt. Hon. J. Wilson,	and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.
H. B. Harington, Esq.,	

PASSENGERS; AND TRIALS BY SESSIONS JUDGES.

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "to amend the law relating to the carriage of passengers by sea," and the Bill "to empower Sessions Judges to pass sentence in certain cases without reference to the Sudder Court."

ABKAREE REVENUE (BENGAL).

The Clerk presented to the Council a Petition of certain distillers of rum, praying that the Council will suspend the passing of the Abkaree Bill and appoint a Committee to obtain information regarding the working of the present Abkaree Act.

MR. SCONCE moved that the Petition be printed.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

MR. HARINGTON moved the first reading of a Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)." He said, there were at the present time, as Honorable Mem-

bers were doubtless aware, no less than three Bills before the Council, all having for their object the amendment of the Articles of War for the Native Army. The first of these Bills* was brought in by the Honorable Member for Bombay, under date the 19th January 1856, and having been read a second time on the 2nd February following, was referred on the same date to a Select Committee, with instructions to report on or after the 6th May next ensuing. The object of this Bill, as set forth in the Preamble, was to make Native Officers and Soldiers, when imprisoned or absent by reason of being prisoners of war, subject to forfeiture of pay and time of service in the same manner in which European Soldiers were liable to forfeit their pay and period of service under similar circumstances.

The second Bill was brought in by the Honorable and learned Vice-President, then a Member of the Supreme Government, on the 19th July 1856. This Bill was read a second time on the 26th July, and referred on the same day to a Select Committee with instructions to report after the 30th October following. The Preamble of the Bill recited that—

"Whereas by the 2nd paragraph of the 101st Article of War for the Native Army, it is provided that it shall be competent to the Governor-General of India in Council, by a General Order, to authorize the Native Troops of any of the Presidencies to claim to be tried by European Courts Martial, and it is expedient that that provision should be extended to all Native Troops in the Military Service of the East India Company, whether belonging to or serving in any of the Presidencies or not; It is enacted as follows:—"

The third Bill was also introduced by the Honorable and learned Vice-President. It was brought in on the 4th September 1858, read a second time on the 18th of that month, and referred on the same date to a Select Committee with instructions to report after six weeks. This Bill proposed to increase the powers of Officers commanding Native Regiments and to amend the Articles of War in certain other respects. No report had as yet been made on any of these Bills, and not being a Member of the Select Committees to which they were referred, he was unable to explain the cause of the delay. Meanwhile, with reference to the early despatch of Native Troops to China, consisting partly of Seikhs, who had hitherto been subject not only to the Articles of War for the Native Army, but also to the authority of their Commanding Officers exercising Magisterial powers, and partly of Hindoostanee Soldiers who had, up to the present time, been governed exclusively by the Articles of War, as was the case with the Bengal and Madras Troops now serving in China—the Governor-General in Council considered it of great importance that some provision should immediately be made by an amendment of the Articles of War for the punishment and trial of offences committed by Non-Commissioned Officers, Soldiers, and others, attached to the Native Army, and the present Bill had been prepared accordingly. The amendments to which the assent of the Council was asked were recommended by His Excellency the Commander-in-Chief, and were concurred in by the Honorable the President in Council.

The first and the more important of the two alterations proposed was in Article 78 of Act XIX of 1847. This Article defined the powers of District and Garrison Courts Martial in punishing certain offences committed by Non-Commissioned Officers and Soldiers, and it was proposed to give these powers, as regarded not only Non-Commissioned Officers and Soldiers, but also Native Camp-followers, to the Commanding Officers of Native Regiments. They were already exercised to some extent by Commanding Officers of Irregular Regiments in the Punjab, and there was every reason to believe that the effect had been not otherwise than highly beneficial on the discipline and general efficiency of those Regiments. The powers, thus proposed to be given, would not, however, be exercised indiscriminately by all Commanding Officers of Native Regiments, but only by the Commanding Officers of those Regiments, on whom they might be specially conferred by order

of the Commander-in-Chief of the Presidency to which the Regiment belonged. It was also provided that the proceedings on the trial, though they would necessarily be somewhat of a summary character, should be recorded by the Commanding Officer in the English language with his own hand, in the presence of two or more European or Native Commissioned Officers, whose signatures would be affixed to the record. As soon as the trial was completed the proceedings would be forwarded to the General Officer Commanding the Division, who might set aside the trial on the merits, but not on merely technical grounds. It was hoped that these provisions would prevent any undue or improper exercise of the powers thus proposed to be conferred on Commanding Officers of Native Regiments.

The next alteration proposed was in Article 112 of the same Act. This Article, as now framed, gave power to Commanding Officers to inflict certain punishments, which the Article detailed, on conviction of light offences. Amongst the punishments which a Commanding Officer might thus award, were confinement in the quarter-guard or defaulter's room, or solitary confinement for any period not exceeding seven days, and it was proposed that during the time any Soldier might be in confinement in pursuance of an award so made, he should forfeit all claim to pay and allowances. Under the Articles of War for Her Majesty's European Troops, forfeiture of pay followed on conviction of desertion or felony, or whenever a Non-Commissioned Officer or Soldier was in confinement under a sentence, and Section II Act XXXVI of 1850 declared that no Native Officer or Soldier or public follower in the Military service of the East India Company should be entitled to pay or allowances when imprisoned under the sentence of a Court Martial or a commuted sentence, or under the sentence of a Court of Criminal Judicature, but should be clothed and subsisted at such rates, or in such manner as the Governor-General of India in Council might from time to time order. There seemed no reason why forfeiture of pay and allowances should not likewise take place during the time that a Soldier was in confinement in pursuance of an award made under the Article of the Act to which he was referring. The State, while such confinement lasted, was equally deprived of the man's services owing to his misconduct, and the penalty of forfeiture of pay and allowances appeared not only unobjectionable, but just and proper.

Before closing these remarks, he would observe that an entire revision of the Articles of War for the Native Army had, he believed, long been deemed necessary; but before such revision could be completed, it would be proper to consult the Commanders-in-Chief of the other two Presidencies as well as other Officers, and he thought that all would agree that the work of revision had better be deferred until the question of the re-organization of the Native Army of Bengal, which was at present under the consideration of the Home Authorities, whose orders on the subject might shortly be expected, had been disposed of.

MR. LEGEYT said, he merely wished to observe, with reference to the remark of the Honorable Member for the North-Western Provinces as to the delay which had occurred in proceeding with the Bill introduced by himself to amend the Articles of War for the Native Army, relating to the forfeiture of pay and service in certain cases, that the Bill in question had been taken into consideration by the Select Committee to whom it was referred, but that at the last Meeting held by the Committee, it was resolved, at the request of the late General Anson, that the papers of the Bill should be made over to him with the view of its being considered in a general revision of the Articles of War for the Native Army then before him.

THE VICE-PRESIDENT said, he also wished to offer some explanation regarding the delay to which the Honorable Member for the North-Western Provinces had alluded, in proceeding with the two Bills brought in by himself. The first of these was a Bill to extend the provisions of the 101st Article of War for the Native

Army provided by Act XIX of 1847, which was introduced into the Council on the 19th July 1856, and which, after having been read a second time on the 26th of the same month, was referred to a Select Committee, who were required to report upon the Bill after the 30th of October 1856. With regard to this Bill he begged to explain that, towards the end of 1856, revised Articles of War for the Native Army had been sent up to the Governor-General by the late Commander-in-Chief, and it was thought advisable that the amendment should be made in the new Act. The Bill was, therefore, not proceeded with. Shortly afterwards the mutiny broke out, and it was not considered advisable at that time to bring in a general Bill to amend the Articles of War for the Native Army.

The object of the second Bill, to amend Act XIX of 1847, was to give certain larger powers to Commanding Officers of Native Regiments than they already possessed under that Act, which prevented them from dismissing or reducing to the ranks a Native Non-Commissioned Officer, and from dismissing a Soldier. It also made some alteration in the punishment of certain offences, and legalized certain sentences which had been passed, but which were not then valid. One was the case of a Soldier who had been sentenced to transportation for seven years, whereas the Articles of War only sanctioned transportation for life. After the introduction of the Bill he received a telegraphic message from the Governor-General, requesting that the Select Committee should not present their Report until he heard further from His Lordship on the subject. It was subsequently thought advisable not to proceed with the Bill except so far as it legalized the sentences to which he had referred. He afterwards consulted the Governor-General upon the subject, and it was not thought necessary to proceed with the Bill, and it was accordingly dropped. He merely made this explanation that the Council might know why the two Bills had not been proceeded with.

Mr. Harington's Bill was read a first time.

TRANSPORTATION OF CONVICTS.

MR. HARINGTON moved the first reading of a Bill "relating to the transportation of Convicts." He said, the object of this Bill was not to introduce any change in the existing law as regarded the actual punishment of transportation, or the offences for which that punishment might be inflicted, but simply to provide that, in cases in which a sentence of transportation was passed, the Court, passing the sentence, should not specify in its sentence or warrant the particular place to which the prisoner was to be transported, as he believed was now done in all sentences of transportation passed by the Supreme Courts of Judicature; but that it should rest with the Governor-General of India in Council to determine to what place the prisoner should be sent for the purpose of undergoing the sentence passed upon him. This was already the law in the Presidency of Bengal, except as to sentences of transportation passed by the Supreme Court at Calcutta, as would be seen on a reference to Regulation IX. 1813 Section II, and Regulation XIV. 1816 Section XV, of the Bengal Code, though certain geographical limits were prescribed therein within which the power must be exercised.

The Madras and Bombay Codes contained no corresponding provisions, and he had not been able to find any rules for regulating the transportation of convicts sentenced to be transported by the Criminal Courts of those Presidencies, other than the Courts established by Royal Charter, in so far as regarded the places to which persons so sentenced were to be sent.

Honorable Members would probably remember the case of a convict, who, after being transported from Bombay to the Straits Settlement, was transported back again to Bombay on conviction of an offence committed by him while undergoing his sentence in the Straits Settlement, which was also punishable with transportation. The Court of Judicature in the Straits Settlement held

that it had no alternative in the matter, but that, under the law, it was bound to transport the prisoner to Bombay, though in so doing it was really sending him back to his native country. A Select Committee of the Council was appointed to consider whether any alteration of the law, or any legislation was necessary; but, after nearly two years, the Committee was discharged, without making any report, on the motion of the Honorable Member who had moved the appointment of the Committee, the reason assigned by him for the second motion being that, subsequently to the appointment of the Committee, cases had occurred which showed that it was not necessary at that time to take any further proceedings in the matter. The particulars of the cases referred to were not stated, nor was it shown how they bore upon the question. But as it appeared that what had been said as to the necessity of the Criminal Court in the Straits Settlement transporting to Bombay all convicts upon whom it might pass sentence of transportation, was erroneous, it being the practice only to transport to Bombay, and there being no law prescribing that limitation, Her Majesty's Government, as would have been seen from the extract of a Despatch from the Secretary of State, lately printed and circulated, were of opinion that no legislation was called for to meet cases such as that just mentioned.

In the concluding paragraph however of the same Despatch, the Secretary of State noticed the occurrence of more than one case showing the expediency of Courts of Justice abstaining, in sentences of transportation, from fixing the place at which the sentence was to be carried out, and of leaving that point to be determined by the Government, and the present Bill had been introduced to give effect to these views. There could, he thought, be no doubt that the Governor-General in Council, in his Executive capacity, was the proper authority for determining to what places prisoners sentenced to transportation should be sent for the purpose of undergoing the sentences passed upon them, not the local Governments, much less the Courts passing the sentence, who must necessarily often be ignorant of or at least very imperfectly acquainted with many circumstances having a material bearing in the matter.

The only other provision contained in the Bill had been introduced in reference to what was stated in the 6th paragraph of the Despatch from the Secretary of State already alluded to. The Section in which this provision was contained, declared that, when a convict, who was undergoing a sentence of transportation, committed an offence, also punishable with transportation, at the place to which he had been ordered to be transported, and a second sentence of transportation was passed upon him in consequence, it would not be necessary for the Governor-General in Council to order the removal of the convict from such place.

The Bill was read a first time.

ABKAREE REVENUE (BENGAL).

MR. SCONCE moved the second reading of the Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal)." Before doing so, he said he only thought it necessary to explain that it was not his intention to press the further progress of the Bill that day, in the event of its passing a second reading. He should therefore merely move that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

MARRIAGES (CHRISTIAN CONVERTS).

SIR CHARLES JACKSON postponed the Motion (which stood in the Orders of the Day) for the second reading of the Bill "to provide for the dissolution of certain marriages entered into by Christian Converts before their conversion."

CATTLE TRESPASS.

MR. SCONCE said, before moving the third reading of the Bill "to amend

Act III of 1857 (relating to trespasses by Cattle)," it seemed only necessary for him to say a few words with reference to a proposition which was before the Select Committee on the subject of wilful damage to Indigo plant by other means than cattle trespass. The Committee on the whole were of opinion that it was not advisable to introduce a provision on the subject in the present Bill, but that this matter should form part of a general law for the punishment of wilful injuries to property. For his own part, he felt that the Council had not been sufficiently informed as to whether complaints of this nature were not now cognizable and punished by Magistrates: and it was his own impression that complaints of damage done to crops were constantly taken cognizance of by Magistrates. On the other hand, the change suggested seemed to involve legislation of a novel and equal character, the principle of which could not be adequately discussed at this stage. So far in his judgment it was not desirable to introduce any provision of the kind in the present Bill. He therefore begged to move that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

LAND FOR PUBLIC PURPOSES.

On the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)," the Council resolved itself into a Committee for the further consideration of the Bill.

Section II provided as follows:—

"It shall be the duty of the Collector to fix the time for the appearance of the parties with reference to the time that will probably be required for the completion of the detailed measurement of the section of land included in the notice, so that ordinarily the detailed measurement should be completed by the expiration of the period specified in the notice."

MR. SCONCE moved the omission of Section II. He said he was quite prepared to acquiesce in the conclusion to which the Council came last Saturday with regard to Section III.

Agreed to.

MR. SCONCE then moved the adoption of the following new Section in lieu of Sections II and III:—

"On the completion of the detailed measurement and on the expiration of the period prescribed in the foregoing Section, the Collector or other Officer shall proceed as provided in the 5th and following Sections of Act VI of 1857."

He said the purpose of this Section was to connect the Bill with Act VI of 1857.

THE CHAIRMAN said, he thought that all that this Bill with the proposed Section would amount to was to dispense with the detailed measurement of the land before giving the notices.

MR. SCONCE said, the purpose of the introduction of this Bill was to avoid delay. First of all, under the present Act, the land was marked out and planned by the Railway Authorities. Subsequently, a detailed measurement was made by the Railway Commissioner and his subordinates, which involved a description of every thing in the land, that is, not only the extent of the land itself, but also the houses, trees, tanks, and other property thereon. In short, a measurement which should enable any party, by reference to that record, to trace a full and complete account of the kind and nature of the property possessed, and to facilitate adjudication. In that respect the present Bill proposed to retain the operation of the old law. The simple change now proposed was that the notice to parties interested in the land would be given before the detailed measurement was commenced, instead of at its completion, as required by the Act now in force. It was a simple question of saving of time, and not of trouble or inconvenience to any one.

THE CHAIRMAN said, he still thought that the purpose of the Bill was to dispense with the detailed measurement prescribed by the present Act. It appeared to him that a much simpler course to adopt, whereby that object would be attained, was to repeal so much of the existing law as required a detailed measurement to be made.

SIR BARTLE FRERE said, he would put it to the Honorable Member, whether it would not be the better course to re-appoint a Committee to consider the Bill. It was hardly possible, after so much doubt had been expressed with regard to the Bill, that it would pass the Committee of the whole Council without some mistake. If the Honorable Member did not object, he would suggest that the Bill be referred back to the Select Committee.

MR. SCONCE said, he should like to know on what grounds the Honorable Member wished the Bill to be referred back to the Select Committee.

SIR BARTLE FRERE said, his ground was simply this. The subject had for some time been under consideration. A leading principle of the Bill, as originally drafted, was that Government might take possession of the land required, before paying for it. That principle had been rejected by a majority of the Council. The Honorable Member had moved to-day the substitution for the two principal Sections in the Bill of a very brief Section referring to the former enactment of 1857. He could not quite understand from his recollection of what he had heard and read of the proceedings, whether the Bill, as it now stood, was calculated to meet the object for which it was intended, and it seemed to him that it might facilitate the object which the Honorable Member had at heart if the matter was referred back to the Select Committee, who would give the subject a careful consideration, and report to the Council at a future sitting whether, in their opinion, the Bill was really necessary or not.

MR. SCONCE said, that in pressing the Bill he could only repeat that a saving of time was the principal object of this Bill. He proceeded to repeat what he had before mentioned as to the manner in which this saving of time would be effected, and concluded by observing that, in the event of the Bill being passed, the main object of the present Act would be gained to the advantage of all and the disadvantage of none.

THE CHAIRMAN said, if this Bill were passed, the object of it would not be understood. It appeared to him that the Bill did no more than dispense with the necessity of a detailed measurement before giving the notices. He did not consider that, under the Bill as it stood, a detailed measurement was necessary to be made before the notices were given. Section IV Act VI of 1857 required three things. It required the land to be marked out, the land to be measured, and a plan of the land to be made. If this measurement were now understood to mean a detailed measurement, the inconvenience which was stated to have been felt might be avoided by enacting that a detailed measurement, before giving the notices, should not be necessary. The Bill, as now amended, appeared to him to be unintelligible. Under these circumstances, although he would not object to the amendments, he would vote against the third reading of the Bill.

The proposed Section was then put and carried.

Sections IV to VI and the Preamble and Title were passed as they stood, and the Council having resumed its sitting, the Bill was reported.

NOTICES OF MOTION.

MR. HARINGTON gave notice that he would, on Saturday, the 4th of February, move the second reading of the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)."

Also the second reading of the Bill "for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons."

ABKAREE REVENUE (BENGAL).

MR. SCONCE moved that the Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal") be referred to a Select Committee, consisting of Mr. Wilson, Mr. Harington, and the Mover.

Agreed to.

CATTLE TRESPASS.

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, February 4, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. B. Harington, Esq.,
Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon. J. Wilson,	and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.

CIVIL PROCEDURE.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor General had assented to the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

CLERK OF THE COUNCIL.

The following Message from the President in Council was also read:—

MESSAGE No. 198.

The President in Council informs the Legislative Council that Macleod Wylie, Esquire, has been appointed to be Clerk of the Council, on a salary of Rupees 2,500 per mensem, in succession to Walter Morgan, Esquire.

By order of the Honorable the President in Council.

W. GREY,
Secy. to the Govt. of India.

Fort William,
The 1st February 1860.

STAMP DUTIES.

THE CLERK presented to the Council a Petition of Native Inhabitants of Bombay, concerning the Bill "to consolidate and amend the law relating to Stamp Duties."

MR. SCONCE moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

MERCHANT SHIPPING.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding for consideration, in connection with the question of consolidating the law relating to Merchant Shipping in India, a copy of papers regarding the proposed amendment of the provisions of the English Merchant Shipping Act of 1854, in consequence of the large number of imprisoned seamen at Bombay.

THE VICE-PRESIDENT moved that the communication be printed.

Agreed to.

ELECTRIC TELEGRAPHS.

MR. LEGEYT presented the Report of the Select Committee on the Bill "for regulating the establishment and management of Electric Telegraphs in India."

RAILWAY CONTRACTORS AND WORKMEN.

MR. LEGEYT also presented the Report of the Select Committee on the Bill "to empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

ARTICLES OF WAR (NATIVE ARMY).

MR. HARINGTON moved the second reading of the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)."

SIR JAMES OUTRAM said, he was satisfied that the provisions of this Bill were all that was at present necessary to meet the requirements of the Native Force about to proceed to China, with which view alone the Bill

had been introduced. The large and most important measure—the entire revision of the Articles of War for the Native Armies of India—could not, of course, be considered until the future constitution of the Bengal Army had been decided on by the Home Authorities, to whom he must accord the merit of exercising in their deliberations the virtues of patience and endurance to a most marvellous extent—virtues which must needs be emulated by the many thousands of the servants of the State in India who were so deeply concerned in the issue.

He took this opportunity to acknowledge the obligations he was under to the Honorable Member for the North-Western Provinces for so kindly undertaking, at his request, to introduce this Bill, which, strictly speaking, it was perhaps his (Sir James Outram's) duty, as Military Member, to have done. But laboring as he unfortunately did under an unsurmountable difficulty in speaking in public, and the rules of this Council not admitting the reading of a written address, and apprehending, as he did, that he might not, under these disadvantages, sufficiently clearly explain the bearings and objects of the Bill, involving as it did *legal* questions, he therefore solicited the aid of his Honorable friend, so recently his colleague in the Government, and furnished him with the papers connected with the subject, including the views of the Judge Advocate General, concurred in by His Excellency the Commander-in-Chief and himself, and which had been mainly followed in framing the Bill. He begged to thank his Honorable friend most gratefully for so obligingly undertaking and so ably fulfilling the task.

The Motion was carried, and the Bill read a second time.

SUCCESSIONS.

Mr. HARINGTON moved the second reading of the Bill "for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons."

The Motion was carried, and the Bill read a second time.

ADMINISTRATOR GENERAL.

Mr. FORBES moved the second reading of the Bill "to amend Act VIII of 1855 (relating to the office and duties of Administrator General)."

The Motion was carried, and the Bill read a second time.

CHITTAGONG DISTRICT.

Mr. SCONCE moved the second reading of the Bill "to remove certain tracts on the eastern border of the Chittagong District from the jurisdiction of the tribunals established under the general Regulations and Acts."

The Motion was carried, and the Bill read a second time.

LAND FOR PUBLIC PURPOSES.

Mr. SCONCE moved the third reading of the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)." Before doing so he observed that, after all that had been said on the subject of this measure, he should not be thought too pressing in pushing on the further progress of the Bill. He need hardly say that he should be unwilling to advocate a measure which could be considered to be imperfect, useless, or injurious. He would first remark that the Bill did not apply to land purposed to be taken for all public purposes. It was intended to apply only to land required for Roads, Canals, and Railways. In taking the land, the first and most material object contemplated by the Bill was to be assured that every body included in the land should know that the land was about to be taken. The first intimation under Act VI of 1857 would be the general notice prescribed by Section II, that the land was required for the purpose of a Railway or other work. This was followed by the proceedings to be taken under Section XXXIV of the same Act, whereby the land required would be openly surveyed and marked out; in fact, trenched, so that

any man through whose land the line ran should have indubitable intimation of the intended operations. Further, by the 3rd Section of the present Bill, notice would be given of the intended survey and marking out in the public Offices therein specified. But, besides that, in the Bill now proposed, when land was required for any of the purposes above referred to, notice would be given to the parties interested that the detailed measurement would commence from a certain date, and requiring them to appear, either personally or by agent, to state the nature of their interests in the land, and the amount and particulars of their claim to compensation. Perhaps he might be allowed to say that this change in the law was calculated to afford material assistance to private individuals; for whereas under the law as it now stood, the detailed measurement might be made in the absence of the parties, it was now proposed that parties owning or occupying the land should be invited to watch the progress of the measurement. This change seemed to him to be a substantial benefit to the parties themselves, while it would tend to effectively assist the Officers engaged in taking the land on the part of the public. This was where the present Bill stopped. A good deal of objection had been taken by his Honorable friend on his right (Mr. LeGeyt) as to the land being taken possession of pending the decision of the arbitrators, to whom the question of compensation might have been referred. The objection taken might or might not be valid, but in this respect he had left the law in its present state.

He then referred to Section V, which would enable the Government to take temporary occupation of uncultivated land situated within two miles of the Railway, Road, or Canal, for the purpose of taking ballast, brick-making, &c. The local Government attached great importance to the enactment of this provision, and if the change in the law before referred to should not, in itself, be considered to be so material an improvement upon the existing law as to justify the Council to consent to the passing of the proposal into an enactment, it would be seen that the Bill made provision for a double object, and he felt accordingly that he was bound to press the third reading of the Bill.

SIR BARTLE FRERE said, he would only make a few observations to justify him in voting for the third reading of the Bill after what he had already said respecting it. The Bill, as it originally stood, introduced two radical changes in the present law. First, with regard to the notice to be given to the owners of land to be taken, it proposed to substitute for the present notice to each proprietor of land that his land had been measured and would be taken, a general notice to all owners of the land required, that their several portions of land would be measured at a future day; and the change was expected to save much delay in the final adjustment. It was strongly urged by the local Governments. With regard to this first part of the Bill, therefore, though he must confess that it was not so clear as it might be, and he greatly regretted that the Honorable Member for Bengal did not adopt the suggestion of the Honorable and learned Vice-President of so wording the Section as to remove all doubts as to its meaning, he saw no special objection to the change. The second great change proposed by the Bill as it originally stood was that, instead of allowing possession of the land to be taken, as required by the existing law, after award of compensation or reference to arbitration, possession of the land might be taken as soon as the Government wished to do so after the completion of the detailed measurement. That part of the Bill the Honorable Member had withdrawn, and he had inserted a new Clause connecting the Bill with the existing law. There was a third provision for taking land required for brick-making and other purposes, to which the local Government attached great importance, and to which he (Sir B. Frere) could see no great objection. Altogether the Bill was expected greatly to facilitate the acquisition of land for Railway purposes. This was an object of great

importance; and as the provision which seemed to him to trench most unwarrantably on private rights had been withdrawn, he would not feel justified in opposing the further progress of the Bill, though it seemed to him far from being such a perfect measure as could be desired. He feared that, when the Bill should come to be put into operation, especially near the Presidency Towns, not only would private individuals often find their rights jeopardized, but public Officers and the Railway officials, whose proceedings were intended to be facilitated, would find themselves suddenly pulled up, and involved in troublesome and expensive litigation, owing to the obscurity of the Act, and further legislation would be called for. Still, as the local Government considered that the Bill was needed for the more speedy acquisition of land for Railway purposes, he did not feel himself justified in further opposing it. He only hoped that his expectations of its working would never be realized, and that no necessity would, as he feared, arise for their having again, at no distant period, to legislate on this subject.

MR. LEGEYT said, he only desired to explain that, after the Select Committee had submitted their Report on the Bill, a Petition, very numerously signed, from Bombay, was presented to the Council, from which it appeared that the Bill had been very imperfectly understood. He (Mr. LeGeyt) thought that the possible advantages of the Bill would not counterbalance the disadvantage of disturbing men's minds as to an unconstitutional power being given to Government to take land for public purposes. He saw that the object which the Honorable Member had in introducing this Bill would not be generally understood, and that the impression was that the Bill did away with many of the precautions required to be taken by Act VI of 1857. He entirely agreed with his Honorable friend opposite (Sir Bartle Frere), that misunderstandings would arise from this Bill. He (Mr. LeGeyt) thought it unwise to disturb a law tolerably well understood for the gain of a few days in the acquisition of land required for a Road, Canal, or Railway. He admitted that, if the Honorable Member's view was generally understood, no evil might result. But he (Mr. LeGeyt) thought that, after the doubts which had been expressed on the subject in this Council, there was little chance of its being better understood by the public generally.

THE VICE-PRESIDENT said, he was very unwilling to trouble the Council with any further remarks on the subject of this Bill. He could not bring himself to the same conclusion as the Honorable Member on the right (Sir Bartle Frere), or vote for the third reading of the Bill. It appeared to him that it was the duty of this Council not to pass a Bill in such a form, that the object of it would not be understood. He pointed out the difficulty that would arise from the numerous references made in the Bill to Act VI of 1857, and said that its obscurity appeared to him to be of itself a sufficient objection to the Bill. The Honorable Member on the right (Sir Bartle Frere) had suggested to the Honorable Mover the expediency of referring the Bill back to the Select Committee; but instead of adopting that suggestion, the Honorable Mover preferred to press the third reading of the Bill.

He (the Vice-President) did not think it right that land should be taken for public purposes in the manner proposed by the Bill. The Honorable Mover had given credit to the Bill for providing that notice should be given to the parties interested before the detailed measurement was commenced. But it appeared to him (the Vice-President) that the Bill did not provide for as ample notice as Act VI of 1857. The Bill required the Collector or other Officer to—

"Cause a notice to be affixed in some conspicuous place or places upon the land at intervals of not less than one mile, and published by proclamation in the neighbouring bazars and villages intimating, &c."

Act VI of 1857, however, provided that—

"After the land has been so marked out and measured, he shall cause a notice to be affixed

in some conspicuous place upon the land, and published by proclamation in the neighbouring Bazars and villages, to the effect that the land is about to be taken by Government for a public purpose; and shall also give notice to the same effect to the occupier (if any) of such land and to all such persons known or believed to be interested therein, or to be entitled by Section XXXVIII of this Act to act for persons so interested as shall reside or have agents within the Collectorate or other Revenue District in which the land is situate, by serving such notice on such persons or their agents."

The provision in the present Act requiring owners and occupiers to be served with a specific notice was entirely omitted in the proposed Bill. He (the Vice-President) thought that if Government wished to take land for a public purpose, it was not too much to require a specific notice to be served on every owner and occupier as required by Act VI of 1857. If, however, it was considered right or necessary to take land without giving such notice, why did not the Honorable Member say so in so many words?

The Honorable Member then referred to a new Section which had been introduced into the Bill, and which proposed to authorize the Government to take temporary occupation of uncultivated land within two miles of a Railway for the purpose of taking ballast, brick-making, &c. He (the Vice-President) thought it was too late now to introduce this Section. The Standing Orders of the Council required the republication of a Bill, and as a general rule he thought that a Bill ought to be republished, when new Clauses such as this were introduced by way of amendment. The Section in question was not in the Bill as originally published. It might be right or it might be wrong to allow land to be taken for the purpose of brick-making, but he thought that it was scarcely right to introduce such a Section at this stage, and to pass the Bill without a republication of it.

For these reasons he should vote against the third reading of the Bill.

MR. SCONCE said, he gladly deferred to the last suggestion which had been made from the Chair, and was quite willing to postpone the Motion for the third reading until the republication of the Bill.

The Motion was then by leave withdrawn.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability."

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

ARTICLES OF WAR (NATIVE ARMY).

MR. HARINGTON moved that the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)" be referred to a Select Committee consisting of the Vice-President, Sir James Outram, Sir Bartle Frere, Mr. LeGeyt, and the Mover.

Agreed to.

MR. HARINGTON said, he wished to ask the Council to suspend the Standing Orders to enable him to move an instruction to the Select Committee which had just been appointed on the Bill to amend the Articles of War, to make their report within one week from this date. The Honorable and gallant General on his left, whom he would take this opportunity of thanking for the observations which, with his usual generosity and kindness, he had expressed towards him (Mr. Harington) on the motion for the second reading of the Bill as regards his connection therewith, had explained to the Council the object for which the Bill was immediately required, namely, to provide for the trial and punishment of certain offences when committed by Native Non-Commissioned Officers, Soldiers, and Camp-followers in the Regiments intended to form part of the Force proceeding to China; and as these Regiments would shortly embark for their destination, it was very desirable that the Bill should be passed into law with as little delay as possible, which

could only be done by suspending the Standing Orders.

SIR BARTLE FRERE seconded the motion, which was agreed to.

MR. HARINGTON then moved that the Select Committee be instructed to present their Report to the Council within a week.

Agreed to.

SUCCESSIONS.

MR. HARINGTON moved that the Bill "for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons" be referred to a Select Committee consisting of the Vice-President, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

ADMINISTRATOR GENERAL.

MR. FORBES moved that the Bill "to amend Act VIII of 1855 (relating to the office and duties of Administrator General)" be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

CHITTAGONG DISTRICT.

MR. SCONCE moved that the Bill "to remove certain tracts on the eastern border of the Chittagong District from the jurisdiction of the tribunals established under the general Regulations and Acts" be referred to a Select Committee consisting of Sir Bartle Frere, Mr. Forbes, and the Mover.

Agreed to.

PENAL CODE.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces, relating to the punishment of persons who might escape or attempt to escape from jail, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

REGISTRATION OF ASSURANCES.

MR. FORBES gave notice that he would, on Saturday next, move the first reading of a Bill to provide for the Registration of Assurances.

INDIAN FINANCES.

MR. WILSON said, it might be for the convenience of the Council that he should give notice now that it was his intention, on that day fortnight, to make a statement regarding the present condition of the Finances of India, and to explain the measures which the Government would be prepared to recommend for the adoption of the Council in relation thereto. He should have been glad to have made this statement at an earlier period, but he feared it might not be in his power to do so.

NABOB OF THE CARNATIC.

THE VICE-PRESIDENT said that the papers relative to certain judgments delivered by the Judges of the Supreme Court of Judicature at Madras, in the matter of an application on behalf of Gunsham Doss, a claimant against the Estate of the late Nabob of the Carnatic, had been printed and circulated. It appeared to him (the Vice-President) that the language used by the Chief Justice at Madras in reflecting upon an Act passed by this Council ought not to be allowed to pass unnoticed. As the Act in question was passed before some of the present Members were in the Council, he begged to move in the first instance that the papers on the subject be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, and the Mover, for the purpose of preparing a statement of the circumstances under which Act XVI of 1859 was passed.

Agreed to.

STANDING ORDERS COMMITTEE.

THE VICE-PRESIDENT moved that Mr. Wilson be added to the Standing Orders Committee.

Agreed to.

The Council adjourned.

Saturday, February 11, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. B. Harington, Esq.,
Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon. J. Wilson,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

POWERS OF COMMANDING OFFICERS.

THE CLERK reported to the Council that he had received from the Military Department copies of papers on the subject of granting increased powers to Commanding Officers for the trial and punishment of Military offences.

SIR JAMES OUTRAM moved that the communication be printed.

Agreed to.

EMIGRATION TO ST. VINCENT AND ST. KITTS.

THE CLERK also reported that he had received from the Home Department a further Despatch from the Secretary of State, regarding the proposed emigration of Indian Laborers to the Colony of St. Vincent, and also to that of St. Kitts.

MR. SCONCE moved that the Despatch be printed.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)."

REGISTRATION OF ASSURANCES.

MR. FORBES moved the first reading of a Bill "to provide for the Registration of Assurances." He said he never rose to address the Council with so strong a conviction that he needed its most indulgent consideration, as he had on the present occasion. The measure which he was presently to introduce was one of so much importance, and one which had, on former occasions, occupied the attention and consideration of men so far more able than he was to deal with it successfully, without having been brought to a practical issue, that he might well bespeak indulgence. For his support in the duty which he had undertaken, he had, however, a personal experience that the Council was always willing to give its most indulgent consideration to those who needed it most, he had the great advantage of being able to make free use of all that had been left recorded by those who had preceded him in the work which he had undertaken to perform, he had had the invaluable aid of his colleagues in the Select Committee which prepared this Bill, and he had the hope that all the imperfections which the Bill might possess would be rectified by the suggestions of the general public, if it should pass a second reading, and be placed before the country.

The first law passed on the subject of Registration was Regulation XXXVI. 1793 of the Bengal Code. It provided Offices for the Registration of deeds affecting real property, of wills, and of authorities by a husband to his wife to adopt a son after his decease. Section IV of the Regulation, however, enacted that it should be left to the option of all persons to register or not as they might think proper, and that the non-registering of deeds should in no wise operate to the prejudice of the rights of the parties thereto, which were to remain the same as if the law had never been enacted. This law, originally passed for Bengal, was subsequently extended to other parts of India, and by Regulation XX. 1812 of the Bengal Code its provisions were extended to engagements for the delivery of indigo, and to bonds, promissory notes, and generally all obligations for the payment of money, the law being still optional. By Regulation XXXVI. 1793 of the Bengal Code, and Regulation XVII. 1802 of the Madras Code, and Regulation IX. 1827 of the Bombay Code, preference was to be given in the

Courts to registered deeds, provided that the party suing on them was not cognizant of the existence of other unregistered deeds affecting the same property at the time that he bought or took it upon mortgage.

This part of the law was found to give rise to great difficulty, inasmuch as a complicated system of law arose out of the construction to be given to the knowledge of parties, and the perjury, forgery, and fraudulent concealments which arose threw general doubt on all conveyances of property. Act I of 1843 was therefore passed, repealing so much of the existing law as required ignorance of the existence of any previously executed deed, to entitle any deed executed subsequently to any benefit from Registration.

With the exception of some law regarding the person who should execute the duties of a Register, he believed that he had stated to the Council the present state of the law of Registration.

Since Act I of 1843 was passed, there had been several propositions made for an amendment of the law, but one only was ever brought before the Legislature, or promulgated for general information. The measure to which he referred was prepared by the Honorable and learned Judge opposite (Sir Charles Jackson) at the time when he filled the office of Fourth Ordinary Member of the Government of India, was most elaborate and comprehensive, and did not become law only in consequence, he believed, of the technicality of its language, and the difficulties which it consequently presented to unprofessional persons.

Another draft of a Law on Registration was prepared by Mr. Thornhill in 1853, and again another by Mr. Grant, then Government Solicitor; but neither of them appeared to have been adopted by the Legislature of the day.

He (Mr. Forbes) was now about to bring the question forward again. He was afraid that there was but one opinion as to the very general prevalence of both forgery and perjury in India. Not only were good claims supported by forged instruments and perjured evidence—not only were good and *bonâ fide* claims denied in reliance on the support which such denial might receive from recourse to false evidence, both documentary and oral—but claims altogether devoid of foundation were set up, and were only too frequently, either wholly or in part, successfully maintained by an unscrupulous resort to the same nefarious means.

It was notorious that the fabrication of deeds had been reduced to system, and that the means of their preparation were kept ready in anticipation of their being required, in order that the requisite appearance by age might be given to the instrument, so that its outward appearance might coincide with the date which it was convenient to assign to it.

When giving an opinion upon the Honorable and learned Judge's (Sir Charles Jackson's) Bill, the Lieutenant-Governor of the North-Western Provinces, Mr. Thomason, said—

> "As regards bonds and money transactions the necessity for some alteration of the law was most urgent. Constant complaints were made of the prevalence of false suits, founded on forged bonds, supported by false evidence. The only remedy for this consists in a stringent law which should render registration within a certain time, and in a manner calculated to prevent fraudulent or clandestine transactions, necessary for the validity of a bond."

The Sudder Board at Calcutta, when addressing Government in 1857, spoke of the frauds prevalent in the Courts as "an evil of overwhelming magnitude," and were of opinion that it was necessary to meet that

> "evil by legislation corresponding in comprehensiveness with the greatness of the evil. The mere extension of voluntary registration would not, in the Board's opinion, have been sufficient to check, in any sensible degree, the prevailing practice of forgery."

The same testimony to the frequency of fraudulent litigation was borne by Mr. Robinson, then Commissioner of Agra, when writing upon a Despatch received from the Honorable Court of Directors, in which they had expressed their fear lest Act I of 1843 should have done injustice to parties by annulling titles by which property was held, which had been acquired in

good faith and according to well and long established usage. Mr. Robinson said—

"One thing particularly strikes me in this correspondence, namely, that the anxiety of the Honorable Court of Directors should have been awakened only by the fear that the purchaser, the capitalist, the monied man, the man of affairs, should be taken in, in making a purchase. That I should be surprised is not astonishing, when it is known that I do not remember a case of this kind, while my memory is overloaded with instances of persons tricked out of their properties by forged deeds of sale, by forged notes of hand, by false running accounts, and by decrees founded on such papers and bolstered by false oaths. It is against actions founded on these classes of documents that the whole country cries out."

And now again, in reply to a call from the Madras Government for a report on a project of law for registration, the Sudder Court at that Presidency said—

"All who have had an opportunity of judging, must have become painfully aware of the existence of the evils referred to. Claims are taken up for investigation at a time remote from the date of occurrence attributed to them, and the Courts depend, for proof or disproof thereof, upon documents and witnesses produced by the parties without effective precaution against such evidence being utterly false."

It was to protect the people of India from the effects of such frauds as were referred to in the communications which he had read, that this Bill had been prepared, and although he did not present it as a perfect measure, or one on which opinion might not be more or less divided, he did consider that it contained the foundation of what the Registration Law should be, and he was sanguine that if this Council would allow it to go forth to the country, they would receive such suggestions and such opinions as would enable them to pass a law, which, for beneficial results, would stand a comparison with any that had yet passed the Council.

The Bill proceeded on the principle of compulsory registration, that is, it proposed to enact that no unregistered transfer of property should hereafter be held to be valid. This principle was admitted by the learned Judge opposite into his Bill, as far as regards transfers of moveable property; it had been introduced in the Punjab and into Oudh; and he believed the Honorable Gentleman on his left (Sir Bartle Frere) would bear him out in saying that it was successfully introduced in Scinde during the time of his administration of that country.

As the Bill was now drawn, it would only affect transfers of moveable property of the value of fifty Rupees and upwards. Should the Bill become law, and be found to work beneficially, its provisions could hereafter be made general; or if fifty Rupees be considered too small a sum on the first introduction of the Law, it could be enlarged in Committee, if the Bill should even reach that stage.

He would only further add that the Bill was not intended to apply to the limits of Her Majesty's Supreme Courts.

The Bill was read a first time.

JOINT STOCK BANKING COMPANIES LIMITED.

On the Order of the Day being read, for the third reading of the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability—"

MR. SCONCE moved that the Bill be re-committed to a Committee of the whole Council, for the purpose of moving two amendments therein. The first was merely of a clerical character, namely the substitution of the figure "I" for the figure "II" in the 1st line of Section I. The other was the insertion of the words "fifty Rupees" in the blank at the 25th line of Section III, which he would propose as the amount of penalty to be prescribed for non-compliance with the provisions of that Section, the amount in the English Act being five pounds.

Agreed to.

The proposed amendments were agreed to in Committee; and the Council having resumed its sitting, the Bill was reported.

MR. SCONCE then moved, under the 87th Standing Order, that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

ARTICLES OF WAR (NATIVE ARMY).

Mr. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

Mr. HARINGTON then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

Mr. LeGEYT moved that the Select Committee on the Bill "to amend the Articles of War for the Native Army, relating to the forfeiture of pay and service in certain cases" be discharged.

Agreed to.

The VICE-PRESIDENT moved that the Select Committees on the Bill "to extend the provisions of the 101st Article of War for the Native Army," and on the Bill "to amend Act XIX of 1847 (Articles of War for the government of the Native Officers and Soldiers in the Military Service of the East India Company)," be discharged.

Agreed to.

Mr. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "to amend Act XIX of 1847 (Articles of War for the Native Army)" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

JOINT STOCK BANKING COMPANIES LIMITED.

Mr. SCONCE moved that Sir Bartle Frere be requested to take the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability" to the President in Council, in order that it transmitted to the Governor for his assent.

Agreed to.

NABOB OF THE CARNATIC.

The VICE-PRESIDENT said, he moved on Saturday last for the appointment of a Select Committee to prepare a statement of the circumstances under which Act XVI of 1859 was passed. The Committee had not yet drawn up their statement on this matter, and he now begged to move that Sir Charles Jackson be added to the Select Committee.

Agreed to.

The VICE-PRESIDENT then moved that the Committee be instructed to report generally on the matter, and to send in their Report, when ready, to the Clerk of the Council, in order that it might be printed and circulated.

Agreed to

The VICE-PRESIDENT also gave notice of his intention, on Saturday next, to move a Resolution on the subject of Act XVI of 1859, and of the Judgments of the learned Judges of the Supreme Court at Madras in the case of Gunsham Doss.

OATHS AND AFFIRMATIONS.

Mr. LeGEYT moved that two communications, received by him from the Government of Bombay, on the subject of Oaths and Affirmations in Judicial Proceedings, be laid upon the table and printed. He said, there was no Bill on the subject now before this Council, and these papers were in answer to questions which had been sent to the several local Governments, in connection with the Bill introduced by the Honorable Member for Madras, which had since been withdrawn. The papers contained a great deal of information on the subject, and it was for the consideration of the Council, whether it would be necessary or advisable to print them, so that on future occasion the opinions of the authorities in the Western Presidency might be available.

ILSON suggested whether not be preferable to allow the cripts themselves being placed the records of the Council. This was the practice in England, and would obviate the expense of printing the papers until they were actually required.

MR. LEGEYT adopted the suggestion, and an amended Motion to the above effect was then made and agreed to.

The Council adjourned.

Saturday, February 18, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,
Hon. Sir H. B. E. Frere,
Right Hon. J. Wilson,
P. W. LeGeyt, Esq.,
H. B. Harington, Esq.,
H. Forbes, Esq.,
Hon. Sir C. R. M. Jackson, and
A. Sconce, Esq.,

CATTLE TRESPASS.

THE VICE-PRESIDENT read a message, informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding a Despatch from the Secretary of State for India, on Section 238 of the Bill "for simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter" (as settled in Committee of whole Council) regarding trial by Jury.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

INDIAN PENAL CODE.

SIR BARNES PEACOCK presented the Report of the Select Committee on "The Indian Penal Code."

INDIAN FINANCES.

MR. WILSON rose and said,

MR. PRESIDENT,—Sir, I feel that the ground over which it will be my duty to travel before I sit down will be so extensive, that the fear of taxing your patience and my own powers will deter me from making any lengthened introductory remarks which may add to that danger. Yet, Sir, I cannot but feel sensible that I owe some explanation, if not indeed apology, for the position in which I now find myself. A year ago nothing could have appeared more beyond the range of probability than that I should now be addressing the Legislative Council of India, so much so, that since that time I have undergone two elections to the Imperial Parliament: it was not till near the close of the last Session, when, as a Member of the Government, it was proposed to me to undertake the honorable but arduous and responsible—perhaps the more so honorable because so arduous—duties which I have now to discharge. Sir, if for a moment I felt some reluctance in occupying so responsible an office, I trust I may say it was from no consideration of a selfish or personal kind; I cannot deny that it was not without the greatest regret that I voluntarily renounced a career, for a time at least, it may be for ever, in the greatest representative assembly in the world, to enter upon a sphere of public duty altogether new; but these are considerations which, however natural, ought not to decide the course of any one who has embraced the service of the State. No, Sir, if I hesitated, it was from a doubt in my own knowledge and capacity to cope with the gigantic difficulties which I was called upon to encounter—difficulties which in a great measure had arisen from circumstances which no one could control, and

the real origin of which are to this day unexplained, if not unexplainable. And if, Sir, I overcame this reluctance, it was because I had so often witnessed public proofs, and indeed in my own person had experienced them, that when a public man applied himself with earnestness and zeal to a difficult task, he could always rely with confidence that the most generous construction would be placed upon his actions, whatever might be the result. And now, Sir, let me assure this Council, that if I bring no other qualities to the task, which in accordance with the notice I gave a fortnight since I have this day before me, I can conscientiously say that I have been influenced by no other motive than to propose what I believe to be best for the interests of all classes, and essential for the prosperity of our magnificent Indian Empire. And here permit me to say, once for all, that, in the proposals which I shall have the honor to make, in the principle of policy which I shall announce as those which will guide Her Majesty's Indian Government, I have the fullest, the amplest concurrence of the Noble Earl the Governor General, and of my other colleagues in Council; and I doubt not we shall experience a generous support from Her Majesty's Government and the Council of India at Home. And, Sir, I should not be doing justice to my own feelings, nor to the merits of others, if I did not bear witness to the valuable assistance which I have up to this time received from my colleagues in Council, from the heads of all the departments I have had to consult, from numerous Members of the Civil Service, and from the leading Commercial gentlemen with whom I have had the good fortune to communicate. I must also add that I have received valuable aid from many distinguished members of the Native community. Wherever I believed sound and useful information could be obtained, I have freely applied for it, and I must express my gratitude for the ungrudging and willing response to my applications. But, Sir, there is one gentleman in particular to whom my thanks are due. My Honorable friend, the Member for the North-Western Provinces, introduced a Bill in the month of August last for licensing Trades. That Bill was introduced before it could have been known that Her Majesty's Government had even decided upon my appointment. When I arrived in Calcutta, that Bill had passed a second reading and had been referred to a Committee, and I feel it my duty to state that, on my arrival, my Honorable friend took the earliest opportunity of requesting that I would in no way feel fettered by the existence of that Bill, but that it was his wish that I should act in every way with regard to it as best suited my own wishes and views. Nothing could be more cordial or frank than my Honorable friend's conduct. And now that the Government has decided that, in the shape in which that Bill now stands, it would be better to abandon it and introduce new measures, I am bound to say that we feel very sensible of the great advantages which have resulted from the discussions which have taken place upon that Bill. We cannot doubt that they will tend very much to aid both the Government and the public in arriving at a wise and correct conclusion; and, Sir, for this assistance, I tender my cordial thanks to my Honorable friend.

Unhappily, Sir, the tragic events which have happened in British India within the last three years have been too extensively and too severely felt to be soon forgotten.

But severe as was the storm, and numerous as were the wrecks strewed

over the land, it is now restored to complete tranquillity, and the Indian political atmosphere was probably never at any former time so settled and clear. But though this is undoubtedly the case, though by the power of our arms and the courage of our civil administration, a well founded feeling of greater security pervades India than at any former time, yet it is unfortunately no state secret, that an evil of the greatest magnitude is corroding the very heart of our political existence. Sir, if we have surmounted one class of difficulties, we have still to grapple with another class, which, if not so exciting and alarming, is still of the most pressing and urgent character. It would be in vain that we could boast of the success of our arms, of the restoration of peace and tranquillity, if we could see no end to that financial disorder which so notoriously prevails at this moment. That our situation is serious, that it is even worse than I expected, I am bound to admit. Sir, if we have difficulties to face, the first essential step to take is to understand their full extent, their utmost magnitude. It will be my duty, therefore, to lay before you, without suppression on the one head and without exaggeration on the other, the exact state of our financial position as I find it. The Government desires to exercise no reserve. We think that our safest course—for rely upon it, if, in matters involving the credit of a State, there is a well founded impression that something is held back, that the whole truth is not known, that the public may be exposed to a disagreeable surprise—it is the Government itself that suffers most from such a state of uncertainty. The money market understands how to discount uncertainties and contingencies. We consider, therefore, that the greatest frankness is not only the line of our duty, as it is of our inclination, but that it is our best policy: we are of opinion also, that under present circumstances especially we are bound to be frank, when we are about to appeal to you to aid us in our efforts to retrieve the position in which we now stand. If we call upon the public to bear new burdens, and to make new sacrifices, however slight, we feel that we are at least bound to explain fully their necessity. And we are confident that, if we can enlist public opinion in our favor at all, it is by pursuing such a course. Sir, it is true we have no representative assembly to satisfy, and it would be only idle to speculate upon the time when India might have such institutions; but, Sir, we have a public opinion, an enlightened public opinion, both Native and European, and above all we have a Free Press and free discussion; and we are of opinion that nothing but good can be derived from those useful—I would say necessary—elements of a prosperous social structure, by frankness on our part. It is by such a course that we believe we can best perform our duty to this Council, and by which we can best enlist the sympathies and aid of the public in the heavy task which for the public benefit of India we are prepared to undertake, and in the success of which we have the utmost confidence, if we have only that fair share of support which we trust our proposals will command.

What then is our position? The last authentic public exposition of the financial position of India was made by my Right Honorable friend the Secretary of State in the House of Commons on the 1st day of August last. In that Statement my Right Honorable friend computed the deficiency of income as against the expenditure of the current year, ending on the 30th of April next, at £10,250,000. That was including the whole of

the Indian and Home Charges. But now, Sir, it is my duty to ask the indulgence of the Council, while I allude to what will appear a considerable discrepancy in the state of our accounts as they stand at the present time. In the month of September, the month following the Statement to which I have referred, a financial balance sheet was drawn up in Calcutta, which seems to have been published in the public prints. It is at the special desire of those who were then Members of the Indian Government, that I should be full and explicit upon this subject. According to that Statement, the deficiency in India was stated for the current year at £2,651,431, and, including the Home Charges, at £6,499,981. But let us bear in mind that this was only an estimate, though founded on the best information which was then at the command of the Government. As might naturally have been expected, the publication in England of so sudden an improvement in the state of Indian finances as that Statement exhibited, when compared with the statement made so short a time before by the Secretary of State, produced an impression very favorable. But if, Sir, it shall appear, as I proceed in my statement, that this impression was not well founded, I shall at least be able to show that the discrepancies proceed from causes over which the authorities in Calcutta at the time had no control. Well then, Sir, I hold in my hand the final estimate of the income and expenditure of the current year, as corrected up to the present time, and a copy of which I will lay upon the table. According to this estimate, the income of the year will be £37,706,209, and the charges, including the stores from England, will amount to £41,770,008, leaving a deficiency in India alone of £4,063,809. But from this amount we have to deduct the Railway Traffic Receipts paid into the Public Treasury. Sir, it is a most gratifying fact, and one which augurs well for the future, that those receipts in the present year amount to no less a sum than £553,920. From this, however, we must deduct £223,220 for working expenses, which leaves a net return from traffic of £330,700. But then from this we must further deduct a sum of £50,000 payable in India as guaranteed interest to shareholders, leaving a balance of £280,200 to be deducted from the deficit of £4,063,809, and reducing it to £3,783,109. Then, Sir, according to the last accounts which I have received from the Secretary of State, the Home Charges, exclusive of the stores furnished to India, which I have already included, but including the sum of £1,114,000 to be paid for guaranteed interest to Railway Companies, will amount to £5,507,020, which, added to the deficit in India, will raise it to £9,290,129. These figures show an increase upon those of September to the extent of £1,417,378 upon the deficit of India, and, including the Home Charges, of no less than £2,790,148. Well, the explanation of this large discrepancy will, I am sure, show, what I feel confident no one can suspect, that there was no desire or intention of misleading the public by that Statement. In the first place, then, the letter which accompanied the Statement showed distinctly, that in the receipts were included an estimate of £775,000 as the receipts from new taxes then proposed for the adoption of this Council. Sir, I fear if that expectation has entirely failed, that I may be considered partly responsible for the failure; but at least the reasons are well known to you and the public. Then again, Sir, only very recently it was discovered that, in furnishing the accounts from Bombay of the

Military expenditure, an error had been made of nearly £600,000, and in those from Madras an unexpected increase in the Commissariat department took place to the extent of £300,000. In the Public Works Department also an unexpected increase of a considerable amount has taken place. Then, again, the September account was furnished without any reference to Railway advances for interest on the one hand, or receipts from traffic on the other, which makes a difference of £833,300; and, lastly, the Home Charges show an increase of £640,490. Now these items, amounting to upwards of £3,000,000, sufficiently explain the great discrepancy which must appear between the figures stated in September and those as corrected to this date. Sir, I do not offer this explanation as a justification of a system under which such uncertainty prevails as to render such discrepancies possible: I would rather offer it as a proof of the absolute necessity for some immediate extensive and radical change of such a system. But what I am anxious to do is to show that those who issued the September Statement did so in good faith and in the *bonâ fide* belief in its accuracy, should there indeed be any one who could possibly harbour a different opinion. Well, Sir, but the really important use that we are called upon to-day to make of the facts to which I have referred is this: that the pleasing illusion which had to some extent been entertained, that we had made some considerable progress out of our difficulties, is but an illusion. I am told that it has been said in England upon the strength of that Statement, that "the neck of our financial difficulties had been broken." It would, indeed, Sir, be a gratifying fact to those who are now responsible for the finances of India, if such were the case; but if it is not so, if our difficulties remain to the full and undiminished, if indeed every day that we postpone a remedy they are only becoming aggravated, then, Sir, I say that such an illusion to be entertained is highly dangerous, inasmuch as it is calculated to slacken our efforts and to weaken our determination to meet those difficulties, to submit to those sacrifices which are necessary to overcome them. Sir, if we permit ourselves to be seduced into a false belief, that we are already rapidly improving, and thereby are less earnest in our endeavours to arrest this serious evil, it will be most unfortunate for ourselves and the country. Without exaggerating any thing, let us look every thing fairly in the face:—if we would really rise to the magnitude of the crisis in which we are placed, and be found equal to it, we must take a broad and unprejudiced view of our position; we must look at things not as we could wish them to be, but as they really are. Well, I have already shown you that our deficiency for the present year, up to the 30th of April, as nearly as it can be estimated, is £9,290,129:—our deficiency in the year ending the 30th of April last was £13,393,137, and for the year preceding ending the 30th of April 1858, it was £7,864,222. Thus, in three years, since the commencement of the Mutiny, the net deficiency of income, as compared with expenditure, amounts to no less a sum than £30,547,488. And what is our prospect for the next year? After the way in which we have been deceived by estimates, you will understand with how much diffidence I must regard any estimate that can be made. But we can only, in looking into the future, take the best means within our reach. I have a special dislike to prospective budgets; they baffle and deceive the ablest financier. However correct calcula-

tions may be, a change of circumstances often upsets them all. Well, but availing myself of the best information at my command as things now stand, allowing for a reduction of £1,000,000, which will appear in the accounts of the present year as compensation for losses, allowing for a decrease in the Military charges of £1,740,000, for which arrangements have up to this time been made, and allowing too for an increase of income from Salt duties, for which the necessary sanction has been obtained, of £410,000, I cannot, even with all these allowances, reduce the deficit of next year below £6,500,000, which would swell the deficiency for the four years into a sum of £37,000,000. But, Sir, what has this state of our finances brought about? Our deficiencies have been supplied by loans in England and in India, and what has been the result? And here I claim the special attention of every one, Native and European, who feel a real interest in India. What was the state of our debt before the Mutiny? what is it now? and, let me ask, what will it soon be if we are to resort to the miserable, the disreputable expediency of continuing to borrow in time of peace? Loans may be justified in time of war, and as the consequence of war for a year after; but even then they should not be exclusively relied upon. But the theory of borrowing during war, involves necessity of some effort to reduce debt in time of peace; but if, instead of this, we are to continue to rely upon loans still in time of peace, what will our debt soon be! Where will be our credit? I hold in my hand a Statement showing the amount of the debt due by the Government of India, in India and in England, in every year since 1834. (All these papers shall be laid on the table of the Council for the use of Members, and I hope will be printed for the use of the public, who are deeply interested in a correct understanding of these matters). Well, Sir, on the 30th of April 1857, just before the Mutiny commenced, the capital of the Public Debt in India was £55,546,652, and in England it was £3,894,400, and the interest payable upon the whole was £2,525,375. Sir, I need not trouble you by quoting the intermediate years, but on the 30th of April this year—indeed at the present moment—the debt in India has been increased to a sum of £71,202,807, and in London to a sum of £26,649,000, making together £97,851,807, and the annual charge on both is now £4,461,029. Thus, in three years, the debt of India has increased by no less a sum than £38,410,755, involving an annual increase of interest to the amount of of £1,935,654. Sir, I am fearful of wearying you with these details, but they involve great facts, which must be understood. We have not been engaged in any foreign war; we have not had to defend ourselves from foreign aggression: we ourselves have attempted no war of conquest:—but internal Mutiny alone has produced this result. Sir, it cannot be too widely made known throughout India, that the late Mutiny has cost the Indian public—I say the Indian public, because I cannot separate them from the Indian Exchequer—and also, because sooner or later, the pressure must fall upon them in one shape or another. Sir, it cannot be too widely made known, that the late Mutiny has cost the people of India, in a direct public charge, independent of all other losses and sacrifices, the sum of £38,410,755, and has incurred an annual charge in respect of it of no less than £1,935,654, for I fear many years to come. Sir, if nations could only understand and appreciate the personal interest,

they had in enforcing an obedience to the law, the duties of the executive and the cost of Government would indeed be greatly diminished.

Well, but this is our present condition. We have a deficit in the last three years of £30,547,488—we have a prospective deficit in the next year of £6,500,000—we have already added to our debt £38,410,755; and with these facts before us, it is for us to take a fair—I will say a bold—view, but tempered with caution and prudence, of our position, to rise to the magnitude of our difficulties, and with firm resolve determine to leave nothing undone which lies within our reach to remedy so crying an evil. Sir, shall it ever be said that the prowess and heroism of English Soldiers, and of English Civilians—I may even add of English Ladies—were sufficient, even in their disproportionate numbers, to quell the fiercest Mutiny that is recorded in history, and that English administrative capacity failed in governing a country so kept—I had almost said so re-claimed? Sir, I am sure, if it lies within the power of the Members of the Supreme Government of India, if it lies within the means of the action of this Council, if the European population in India can assist, if the millions of well-disposed Natives can aid, in preventing so disgraceful a catastrophe, one and all will render their best assistance in the task. At least it will be my duty, on behalf of my colleagues, and myself—having laid before you the necessities of the case—to propose measures for your adoption, which we deem absolutely necessary, and not more than adequate to the occasion; and which we shall deem it to be our highest duty to India, in the responsible position we fill, to use all the means we possess, with moderation and temperance, but with firmness, to enforce. It is in the true interest of India, and of the Indian Empire, that we are called upon to act; do not let us deceive ourselves, or lull ourselves into composure, by the fact so often referred to, that there have been financial difficulties before: that without any very extraordinary effort or sacrifice they have been surmounted. It is common to refer to the laudable and successful efforts made by Lord Amherst to retrieve the financial difficulties which arose out of the Nepal and Mahratta wars: to the vigorous administration of Lord William Bentinck in retrieving the disorders which arose out of the first Burmese war. Now, Sir, if I refer to the acts of those two distinguished noblemen, I need not assure you that it is not for the purpose of depreciating them, nor of detracting from their high merits. If I compare their position with ours, it is only for the purpose of showing that our case is so incomparably worse, that it would be only deceiving ourselves to set them up as an example in any way applicable to the present time. For the purpose of understanding our own position better, let us see how those two cases stood. The Nepal war began in 1814 and continued till 1816, the Mahratta war began in 1817 and ended in 1819. Lord Amherst became Governor General in August 1823. During the war from 1814 to 1819, there were six years of deficiency, the whole amounting to £5,445,931, and when Lord Amherst arrived, there had been three years of surplus, amounting to £2,461,099, making a balance of deficiency of something less than £3,000,000. From 1814 to 1823 the debt of India increased only by £2,300,000. Again, the Burmese war began in 1824 and ended in 1826. Lord William Bentinck became Governor General in July 1828. No doubt he had a more serious difficulty to deal with. In the preceding five years the

total deficit of Revenue amounted to £14,300,000, and the Indian Debt had increased by £12,000,000. But neither of these cases are to be compared in intensity with our present position. Lord Amherst had to meet an accumulated deficiency of nine years of £3,000,000. Lord William Bentinck had to cope with a deficiency of five years of £14,300,000. We have to deal with deficits of four years, amounting to £37,000,000; and amounting in the present year to upwards of nine millions. I say I wish only to impress upon you the magnitude of the difficulty we have to meet. Again, let us compare our present position with that in which Sir Robert Peel found himself in 1842, when he felt himself bound to resort to remedies of no ordinary kind, and I will venture to say as much against the popular feeling in England at the time as any thing we are likely to propose can be in antagonism to the popular feeling in India. When Sir Robert Peel succeeded to the Government in 1842, the first thing he had to deal with was a financial deficiency—a deficiency which may be said to have contributed mainly to the downfall of the preceding Government. Well, what was the extent of that deficit? Sir Robert Peel was the greatest master in making a Statement that this age has witnessed. But with all his dexterity, the whole amount which he was able to show to justify his bold, but wise measure, was a deficiency for five years, from 1837-38 to 1841-42, of £7,500,000, and including a prospective deficiency for the following year, he could only make up a total of £10,070,000; and this, be it remembered again, in the comparison, is to be put against our deficiency of £37,000,000 in four years; while his prospective deficiency for the coming year was £2,570,000 against ours of £6,500,000. Sir, I again repeat that the practical use which I wish to draw from these comparisons is to enable us to understand the real dimension of the task we have in hand, and above all to induce us to determine once and for all to reject all mere palliatives, and to brace up our nerves to the full extent of our duty. Whatever we do, let it be effectual for its purpose. But, Sir, in making these comparisons of the expenditure in the last three years, with that of the wars to which I have referred, we cannot but be forcibly struck with the greatly increased cost upon the recent occasion. Sir, in one respect I must own that I find in this one of the few redeeming points to reconcile us to the financial difficulty in which we now find ourselves. The future historian of India, when recording the occurrences of the last three years, if he be a man of fine discrimination, will dwell with pride upon the fact that at that moment India was governed by an English nobleman, who, in the midst of the greatest peril, never for one moment allowed his judgment to be swayed by passion, or his fine sense of honor and justice to be tarnished by even a passing feeling of revenge. For, perhaps, the first time in any Asiatic war Lord Canning adopted throughout the whole of this Campaign the most scrupulous principle of integrity. Whatever service was performed; whatever provisions were supplied; were strictly paid for: and when under the vigorous administration of the Punjab money contributions were exacted, the obligations have been all acknowledged and faithfully repaid. Sir, rely upon it, however much such a mode of conducting a Campaign may add to present expense, the statesman who pursues it is far more than re-paid in the permanent stability which he thus gives to an Empire; and, I cannot avoid this

opportunity of saying that, however much some may have differed with the policy which the Governor General pursued, yet that the time is not very distant when even they, and I am sure the public at large, will do justice to the calm and dispassionate, but truly courageous discrimination which the Noble Earl has exhibited throughout those trying occurrences; and I cannot but believe that we are already reaping the benefits of it in the great repose which has now spread itself over India, and which I am convinced will enable us the more effectually to deal with our present financial difficulties. Sir, it is the privilege of Englishmen to criticise, and I hope they will long exercise it; but it is also characteristic of British Statesmen to pursue, through good report and evil report, the even tenor of their policy, trusting to time to justify them.

Well, Sir, I have pointed out to you, without the slightest reserve, the predicament in which we stand at this moment. I have shown you how infinitely worse it is than any similar occasion which we have recorded in India, or than the most pressing modern crisis in England. I have confined my observations to the period that has elapsed since May 1857. Are we to take that as a standard to which we should aim to arrive? Even if we could do so with regard to the Army, you must bear in mind that I have already shown you that, in the last three years, the interest of the debt has increased in round numbers by £2,000,000; and there are other increased charges beyond our control. But even were this otherwise, and even if it were possible that we should be able to regain the standard of 1857, would that be wholly satisfactory? We have a deficiency of upwards of £30,000,000 in three years, but is that a new state of things? Sir, I hold in my hand a return showing the deficits and surpluses of Indian Revenue as a whole, in India and at home, since 1814 down to 1860, and what is the result? The period embraces forty-six years: of that number we had a surplus in thirteen years amounting on the whole to £8,895,437, a sum not equal to the deficit of the present year, and we had deficits in the remaining thirty-three years, amounting in the whole to the large aggregate sum of £72,195,416—thirteen years of surplus at an average of only £684,264 a year, thirty-three years of deficit at an average of £5,540,000 a year. Nor was this state of things peculiar to the earlier part of the period to which I have referred. Taking the return only from 1834, when the management of India became purely governmental, we have a period of twenty-six years: of these the finances of India were in surplus only for seven years, while in the remaining nineteen years they exhibited large deficiencies. Again, Sir, I find by a return to Parliament in the last Session, that of the fifty-nine years which have elapsed in the present century, in no fewer than forty-four of those years have considerable, often large, additions been made to the Indian Debt, while in fifteen only have diminutions taken place; so that the normal state of Indian Finance may be said to be deficiency of income and addition to debt. Shall I ask if that is a satisfactory state in which the finances of a great Empire should remain? Is that a condition to which we should be content to return? Sir, all who have the honor, dignity, and future security of India and of her teeming population at heart, will emphatically answer—no. Well, but is there no other source of uneasiness in what may be termed the normal condition of our finances? I fear there is at least one, if not more. Sir, I cannot forget that we derive about five millions net a year from

the sale of Opium. Now, perhaps, this is one of the most unique facts that the history of finance affords, that a Government, without calling upon its people to make any sacrifice whatever, on the contrary by affording a profitable cultivation to a large class, should be able to derive a revenue for the benefit of the State of so large a sum. But what security have we that this will always continue? It is the only instance I remember at the moment of one country having succeeded in raising a large revenue from the subjects of another. No doubt the demand has recently continued good and the prices high, but that I am disposed to regard rather as a source of danger than otherwise. I have no doubt our true policy is to keep up the supply to the full demand, and to obtain moderate prices for a large quantity, rather than large prices for a small quantity. High prices always lead to increased competition, and are particularly likely to do so in this case; and it appears, therefore, that steps have been taken to effect this object. But still, at the best, what security have we that at some time or other this unusual source of revenue may not to some extent fail us? It seems to me that it is impossible not to regard it less or more as somewhat precarious. But again, Sir, there is another evil of no slight kind, which has resulted from the fact that we have hitherto relied so exclusively upon the land for our revenue. As I have already shown you, the finances of India have been almost always in difficulty. Deficits seem to have been their normal condition. But efforts have always been made to raise the income, and I fear that those efforts having been mainly directed to improving the land revenue, have resulted in something bordering upon oppression on the ryots, and not leading in the long run really to the improvement of the revenue. Of the evils of over-assessment, we have recently had a striking proof in Madras. Much to the honor of Lord Harris, the late Governor of that Presidency, his careful attention was directed to that subject, and so successfully had he applied the principle of revision, that my Honorable friend, the present Governor, Sir Charles Trevelyan, who has followed up the good work, informs me that, by reductions of assessments made under that revision, the land revenue of Madras, in consequence of extended cultivation, will be increased in the present year by a sum little short of £500,000 or thereabouts. Sir, our best thanks are due to Lord Harris, who, with so little ostentation, has instituted so marked a reform—a reform which enriches the people and the public treasury at the same time. I ask then, Sir, is it wise for a great Empire to rely so exclusively upon one source of revenue as we do in India, and to press our charges upon it so much, that while we run a risk of oppressing the people, we are certain, if we do so, to impoverish the Exchequer?

Sir, I am fearful of wearying the Council with all these details, but I trust you will bear with me. We have a grave conjuncture of affairs to deal with. I think you will already begin to perceive that the evil is deeper and broader than at first it appeared. I think you will begin to see that our task will be heavier, and must extend to great questions of administrative reform, as well as to immediate questions of finance. You will, therefore, I am sure, pardon me if I feel it to be my duty to the best of my ability to unbare before you the whole extent of the evils as they present themselves to my mind. Sir, I sincerely trust that, in the free observations which I feel compelled in the performance of my duty to make, I

shall be understood not to reflect unfavorably either upon any individual or upon any class. It is to the system, and the system alone, that I refer. Nay, I will say more. It has been a matter of surprise to me that, with so defective a system, greater evils have not arisen, and that they have not, I attribute only to individual zeal and care. It is, Sir, with that system we shall have to deal, with a system under which in thirty-three years out of forty-six we have suffered a deficiency in our finances at the rate of £5,500,000 a year, and amounting in the whole to £72,195,416, under which we have now a deficit in the present year of upwards of £9,000,000 and a prospective deficit in the next year of about £6,500,000, under which our debt has increased in three years by upwards of £38,000,000, and the annual charge upon it by about £2,000,000. That is the price the Mutiny has cost the people of India. It cannot be repeated too often.

But, Sir, bad as our case may be, and even worse than we expected, is there any ground for despair? Sir, in my opinion, if we are only prepared to do our duty to our country and our Sovereign, I say there is none. On the contrary, gloomy as may be the picture I have drawn, and it is not more gloomy than justice demands, I will freely express my own most confident opinion that, if we are only true to ourselves, and I will add to the weighty obligations we have undertaken towards India, not only are all these evils capable of solution, but I will say further, that we may, with the blessing of a higher power, aid in creating a future of brilliant prosperity. Sir, at this moment every thing favors our noble enterprize, if we will undertake it. Nay, the very crisis through which we have recently passed at such a sacrifice greatly favors us. While yet I was in England, upon more than one occasion I expressed my unbounded confidence in the resources of India. I did so from having watched the progress of its trade, and having studied the character of the country at a distance; but, Sir, if I had confidence in the resources of India while yet I had not seen it, I must say that it has been greatly increased by what I have had the privilege of witnessing since my arrival. It may appear almost presumptuous in one who has been in the country little more than two months to allude to his experience or to opinions based upon personal observation. But, Sir, I have had advantages during that short interval which do not often fall to the lot of those who pass even many years in the country. As you are aware, a fortunate accident led to my visiting the Upper Provinces, immediately after my arrival. I have travelled from Calcutta to Lahore, and from Lahore back to Calcutta. I have visited every Town and City of importance over that extensive tract. I have had the advantage, and a rare one I must acknowledge it to have been, of freely discussing all matters of public interest with the Civil Servants of the Crown at every Station. At every important Town I have had free intercourse in public and in private with the Native Merchants and Bankers, and of these I will say, that in enterprize, in knowledge, and sagacity, they would well compare with some of the most enlightened classes in Europe:—the impression produced upon my mind with regard to the resources of the country and the capacity of the people to develop them was most favorable. A richer soil, a finer climate, a more industrious, active and frugal, and I will add docile, population, it would be difficult to find anywhere.

Sir, it would be difficult to imagine any thing more intensely interesting. I have seen many European countries, but I have seen none at once so striking, so wonderful, so interesting. The nearest comparison I could make would be a Belgium upon an immensely enlarged scale. You have the same antient magnificent cities, with their narrow streets, their thronged population, their splendid public buildings, the relicts of decayed dynasties, and the active bustle of trade at every corner; but what is more important and more to our present purpose, you have the same expansive plains, with Alpine mountains in the far distance, affording sanitarium for the people and a climate for new varieties of productions—you have large rivers and magnificent canals irrigating the country:—the same careful husbandry with cultivation up to the roadside, and the same teeming population, all bent on active and profitable pursuits:—you have the same thrifty and economical habits. Sir, I am told that all these symptoms have intensified since the Mutiny. Considering what we had before been told of India, I must say that the impression produced on my mind, both from what I saw and what I heard, was as if the people of all classes had been roused into a new activity by the great crisis which had shook the whole country. On all hands I was told by European Officers that the change since the Mutiny was so great, that people seemed as if they had been awakened from a state of lethargy to a state of intense activity, that the whole character and tone of the people was so much altered for the better, since the signal proofs they had received, first of our power and next of our justice, moderation, and magnanimity, that those who had been absent but for a short time could hardly be fair judges of the present state of India. Such was the impression on my mind. I never saw greater signs of industrial vitality, all full of promise of future prosperity. When I had the good fortune, as Secretary to the India Board, in 1849, to pass the two first Bills through Parliament for Railways in India, I was told, and that by those who had long experience in India, that the Natives would not use them. We have only on this side of India two extensive pieces of line open, from Calcutta to Raneegunge and from Allahabad to Cawnpore. Those who have seen the rush of third class passengers on a holiday in Belgium, can from that form the best idea of the use made of these lines by Natives. What we require is the completion of those lines at any cost, but quickly, and we shall see a result for which the most sanguine is not prepared.

But, Sir, there is another element of secure prosperity which India especially enjoys. Almost every thing she produces is in constant and boundless demand in Europe, and almost every article of importance required in Europe is to be found increasing in India; so varied are her products. Sir, in this fact there is great security for the future. Let cultivation be extended and improved ever so much, there is no fear of the want of a market. But let me appeal from mere opinions to facts, to show the condition in which India is now placed. Sir, it is undoubted that, at the present time, India enjoys a prosperity far beyond comparison with any former time; and what is most satisfactory is that the evidences of that prosperity have been for some years past steady and accumulative. It is not, Sir, a mere transitory excitement. As proof of this, Sir, let me refer to our Exports and Imports. I hold in my hand official returns, which exhibit the amount of our

Exports and Imports in each year since 1834. Sir, I now speak of Merchandise only, leaving out of question for the present our large transactions in Treasure. Well, Sir, in 1834-35 the total amount of our Exports to all parts, was only £7,993,420; in 1858-59, it was no less than £26,989,000; and in the present year it will be considerably more. Again, Sir, in 1834-35 the value of our Imports into India was only £4,261,106; in 1858-59 it was no less than £21,366,447; and in the present year will exceed £24,000,000, and this is independent of Treasure, to the average amount in the last five years of no less than £11,223,107 yearly. Sir, I have had these returns divided into periods of five years, showing the average of each period for convenience. This division gives the following results :—

IMPORTS.

Average of five years.		Merchandise.	Treasure.
		£	£
1834 to 39	average ..	4,970 000	.. 2,345,006
1839 ,, 44	,, ..	7,691,428	.. 2,762,164
1844 ,, 49	,, ..	9,131,612	.. 3,073,249
1849 ,, 54	,, ..	10,756,134	.. 4,474,107
1854 ,, 59	,, ..	15,365,934	.. 11,223,107

EXPORTS.

Average of five years.		Merchandise.	Treasure.
		£	£
1834 to 39	Average..	11,071,529	.. 251 069
1839 ,, 44	,, ..	13,789,769	.. 462,795
1844 ,, 49	,, ..	15,075 044	.. 1,320,503
1849 ,, 54	,, ..	14,899,594	.. 646,469
1851 ,, 59	,, ..	22,187,736*	.. 850,005

Taking the Exports and Imports of Merchandise and Treasure, and there is really no distinction between the two, we find that the trade of India has grown up during the period embraced in these tables, from a total sum (Exports and Imports together) of £13,847,289 in 1833-34, to one of £60,219,660 in 1858-59. Can we desire a stronger proof of the steady prosperity of the country? So much for our external trade; but I have proofs no less conclusive of the improvement of our internal condition, to which I would claim the attention of the Council, and especially as they touch the interests of a body of gentlemen to whom I shall have hereafter to refer. It is notorious how much the price of all country produce has increased of late years, in consequence of this great demand for exportation. Now, Sir, what has been the effect produced upon the interests of the cultivators of the soil by this enlarged trade? I hold in my hand a return showing the number of estates in the permanent settled districts brought to sale in each year since 1834-35, to the present time, for default of rent. In the first year of the period, estates representing an annual rental of 4,81,403 Rupees, or £48,140, were sold for rent; in the next year, 1835-36, the sales represented an annual rent of 950,608 Rupees, or £95,060, and the average of seven years sold at that time represented a rental of £56,751. What is the case now? In the last year, 1858-59, the sales represented a rental of only 14,493 Rupees, or £1,449, while the average of the last seven years shows a rental of only 65,326 Rupees, or £6,532, being little more than a ninth of the former average. Again, if I refer to the arrears of Land Revenue at the end of each year, I find that from a sum of upwards of four crores (£4,000,000) in 1834, they have now dwindled down to a mere nominal sum. Sir, I am not forgetful of the share which an improved administration may have had in producing these results; but undoubtedly they are also in great degree, if not mainly, to be referred to the increased demand for the produce of the land occasioned by our extending commerce, and the unusual prosperity which has resulted therefrom. But, Sir, another result has flowed from these causes, more important and

more interesting than any, because it affects directly the great masses of the people, individually so helpless. Sir, I am thankful to know that the benefits thus conferred by our commerce upon the land have extended, and in no slight degree to the labourer. It is no exaggeration to say that such has been the increased demand for labour, that the rate of wages has risen in many districts two-fold, and in some three-fold during the last few years. In the face of evidence of this kind, can any one doubt that all classes in India are in a state of prosperity unparalleled at any former time. It is indeed, Sir, I believe, a fact, which is undisputed. Well, let us pause for a moment and consider what it is I have shown you. I have shown from statements and facts only too well known to every one, and beyond dispute, that the finances of the State are in a condition of unparalleled disorder and deficit; and I have shown by proofs equally conclusive, that under the protection of that Government, by the peace and good order which it maintains, by the commerce and enterprise which it succours, every class of the community is in a condition of unparalleled prosperity. Could there be a greater contrast than that which it has been my duty to draw to-day, between the condition of the Government all powerful in its executive character, and that of the people? But, Sir, there is such a sympathy beween the credit of a Government, the finances of the State, and the Commerce and Trade of a country, that it would be contrary to all history that such an anomaly should continue. Depend upon it, it is for the interest of the commerce of India, for the interest of the land of India, for the interest of the labourers of India, that this anomaly should be cured as quickly as possible. It is not only the duty, but it is the direct interest of all classes to contribute their fair share to restore the financial position of the State; and above all it is the first duty of the Government to take steps in the public interest to that end. Sir, the Government of India, representing the interests of the Crown of England, stands in a peculiar position towards India. England does not, and never has, exacted tribute from India. Every Rupee of taxes raised in India is devoted strictly to Indian purposes. If England expects or desires for advantage from India, it is only in a way entirely consistent with the true interests of India—it is by a reciprocal exchange of products, which constitutes that commerce which I have shown you has showered so many blessings on India, to the full, I admit, reciprocated by England. If then, Sir, it be our duty to call upon India, to make new efforts to place the finances of the Government in a condition consistent with the public interest, it is for the benefit of India mainly that we do so. In so doing, we shall only be performing the first duty which a State owes to the people over whom it governs. Now we fully admit that, in our endeavours to restore the equillibrium between Income and Expenditure, our first duty is to use every effort to reduce all expenditure to the lowest point consistent with security and good Government, and to make all those administrative reforms which are so essential in order to secure economy, and I hope, before I sit down, to show you that the Government is not unmindful of its duty in this respect. But, Sir, I submit that there is a point below which the interests of the country, in preserving that peace and security which are so essential in order to maintain that prosperity which the country

now enjoys, forbid us to carry reductions. This point has been carefully considered, and it is the opinion of the Government, that in the interest of India, it must have recourse to some new sources of taxation, as well to meet present deficiency, as to place our finances in a more permanently secure position for the future. But if we are about to call upon our fellow-subjects in India to submit to some further contribution to the State, I may be permitted to point out how very small is the sum in the shape of taxes which they at present pay. I believe it to be undoubted that India is, and will remain, the lightest taxed country in the world, in proportion to the good Government which it enjoys. Sir, the sum total of receipts for the current year is £37,706,208. But that includes Land Revenue, which no one will deny can only be regarded as rent, the proprietary right of the Government to a share of the rent having never been disputed, and which, if not paid to the Government, would undoubtedly be paid to the zemindar or other proprietor:—it also includes the receipts from Opium, which in no sense can be called a tax:—it includes other receipts of a like kind, which on the whole amount to no less than £28,678,235. The balance amounting to £9,027,973 can alone be termed taxation in the sense in which that term is used in Europe. The receipts from the Crown lands of England would certainly never be called taxes. This sum of £9,027,973 consists of Customs duties, Excise, Sayer, Abkaree, Moturpha, Trade Taxes, Salt; and Stamps. Strictly speaking, these are all the taxes now levied in India. The population of British India by the last return to Parliament was 132,292,000, giving an average of one shilling and four pence, or of little more than ten annas a head; while in England the rate per head of taxation strictly speaking is £2-3 a head. In India, even including Land Revenue, the rate would be considerably under five shillings a head.

Having, then, I trust, shown fully the necessities of the Government having given you the best proofs of the prospects and ability of the country to contribute the necessary cost of good Government, and having I trust satisfied you that the burdens of taxation in India are at the present time light in comparison with other countries, it is my place now to proceed to explain the measures which we think it our duty to take in order to place the finances of the country in a sound and satisfactory condition: in doing so, it will be our endeavour to propose measures adequate for the purpose, for we are of opinion that no greater mistake could be made than to propose measures insufficient in themselves, and which could only lead to the necessity of having recourse to further measures hereafter. Sir, it is our wish to deal with the difficulty once and for all, and not to render it needful again to disturb the public mind, or the course of transactions, by having recourse to further measures hereafter. In proposing these measures, there are three great principles which have guided the Government in their adoption—the first is that whatever measures are proposed, they shall at least be based upon perfect equality and justice to every class of the community, alike Natives and Europeans, alike official and non-official: the next is that they shall be in conformity with sound financial and commercial policy; and the last is that in this, as in all other matters in the Government of India, we will scrupulously endeavour to avoid any thing that would offend the religious views and rites of our native fellow-subjects. Sir, I have

heard so much upon the latter subject, so much upon *this* tax being contrary to native custom, and *that* being in accordance with native custom, that I have considered it to be my duty to look carefully into the recognized authorities upon this subject. Sir, I have consulted the antient sacred authority of Menu; and the version of the antient Hindoo law, upon the best authority at my command, is as follows:—

The Revenue Law laid down by Menu.

"The revenue" (says the writer) "consists of a share of grain and of all other agricultural produce; taxes on commerce; a very small annual imposition on petty traders and shop-keepers; and a forced service of a day in each month by handicraftsmen.

The Merchants are to be taxed on a consideration of the prime cost of their commodities, the expense of travelling, and their net profits.

The following are the rates of taxation:—

On cattle, gems, gold, and silver, added each year to the capital stock, one-fiftieth; which in time of war or invasion may be increased to one-twentieth.

On grain, one-twelfth, one-eighth, one-sixth, according to the soil and the labour necessary to cultivate it. This also may be raised, in cases of emergency, even as far as one-fourth; and must always have been the most important item in public revenue.

On the clear annual increase of trees, flesh meat, honey, perfumes, and several other natural productions and manufactures, one-sixth.

The king is also entitled to 20 per cent. on the profit of all sales. Escheats for want of heirs have been mentioned as being his, and so also is all property to which no owner appears, within three years after proclamation. Besides possessing mines of his own, he is entitled to half of the precious minerals in the earth."

Now, Sir, I must say that there is latitude enough here for the most needy Exchequer and for the most voracious Minister:—a twenty per cent. income tax upon profits; a tax varying from two to five per cent. upon accumulated capital; a share of almost every article produced; an annual tax on trades; half the produce of mines, and besides other means, certainly present a sufficiently wide field for taxation to satisfy any one either as to amount or as to kind. The choice is ample. The extent not unduly restricted. I should imagine the revenue laws of the antient Hindoos must have been contributed to the sacred compiler by some very needy finance minister of the day.

Well, then, the first part of our proposals to which I wish to call the attention of the Council, will have relation to our present Customs law, with a view to propose some not unimportant modifications, though not leading to any very great financial results. It will be remembered that the present Tariff was passed last year under a very pressing emergency, and in a somewhat hurried manner. Sir, experience, and further reflection, have convinced us that there may be some considerable improvements made in it, which would contribute greatly to the public advantage; and these we propose to make even at some temporary loss upon some articles. Sir, upon the whole, the changes in the Tariff of last year have proved most successful. The trade has continued rapidly to increase and a large revenue has been received. We have not yet completed the full year; but taking the portion of the year expired, that is, up to the 31st of January, I find that the net receipts into the Treasury, in the present year, have been, for Calcutta alone, £1,646,829, against £1,213,566 in the corresponding period of the previous year: results equally favorable have been experienced at the other ports. Upon the whole the Customs in the present year are expected to yield £3,430,000, as compared with £2,073,000 the year preceding; as a whole, therefore, the change is working well. But it has been my duty closely to analyse these receipts in their different classes, and I regret to say that I find one class of duties which is not

answering the expectation formed of them. It will be remembered that in framing the last Tariff, a considerable number of articles, which formerly bore a duty of five per cent., were raised to twenty per cent. Sir, I fear it will appear, when we closely examine our Customs returns in detail, that that increase was too great. I hold in my hand three returns in relation to the entire class of goods which are subject to twenty per cent. The first return shows the quantity of those goods imported upon an average of three years before the change of duty took place. This average represents a sum of £609,636, but it must be borne in mind that those years included the year of the Mutiny and the one immediately succeeding it. The second return shows the quantity of those goods imported in the year immediately preceding the new duties. The amount was £700,638, the last return is of the quantity of the same goods imported from the 12th of March last year, when the new duties took effect, to the 31st of January, and with an addition by estimate for the six weeks to complete the year. The amount together is only £450,647. Here then, Sir, we have a falling off as compared with the average of three years of 25 per cent., and as compared with the year immediately preceding of more than 35 per cent. Sir, this is surely a premonitory symptom, and a warning to retrace our steps. Sir, we accept the warning, and have decided to reduce the duty upon all the articles in the Tariff, for every one of them show in the decline, which now bear a duty of 20 per cent., to 10 per cent., Tobacco only excepted, and to which I shall advert hereafter. Even as a matter of policy, there are many considerations which, in the views of Government, render this a desirable step. Assuming—which, I think, we may, looking to other articles of Trade—that the reduction from 20 to 10 per cent. will raise the Imports again to the rate they stood at in 1858, then the immediate loss of revenue will not exceed £20,000 in Calcutta, and £10,000 in Bombay and Madras, making a total of £30,000. Sir, there are some other reductions which we are bold enough to propose. We wish to take a broad view of the interests of the country and of the best means of retrieving our position. We are desirous to give every opportunity for the produce of the country to increase, and for commercial intercourse to be enlarged; and where impediments stand in the way, we are desirous of removing them as far as our present means will justify; and especially when we can recover ourselves in another less objectionable way. Sir, it must be evident that, as a general rule, when the products of our soil have to find a foreign market, and in cases in which they enter into competition with those of other countries, the direct effect of export duties must be to place our products in those countries at a disadvantage with their foreign competitors:—in point of fact, it cannot be denied that in such cases an export duty falls chiefly upon the producer who cultivates the article. But, again, we have some articles of raw material which merely pass through our territory for shipment at our ports. The article of sheep's wool is one of these. A large quantity is imported into Bombay from Cutch, and from the countries beyond the Indus chiefly, and exported to England. At present that wool is charged with an import, I should rather say a transit duty of no less than 10 per cent. Wool produced in our own territory pays an export duty of 3 per cent. The Government is of opinion that a bulky article of this kind, that has to encounter a fierce competition

with the wool of Australia, South America, the Cape, and other places, should be released from any impediment of this kind. We believe it to be of the utmost importance even, in a political point of view, to encourage this rising trade on the part of the hill tribes which skirt our North-west Frontier. Already the exports of wool from India are as important as they were from Australia only fifteen years ago; in the two last years, they have, however, shown some tendency to decline, and I fear our heavy transit and export duties have been the cause. From the enquiries which I made upon the subject at Umritsur and at Lahore, I am inclined to believe that a large trade in wool will soon be developed from our frontier hills as soon as the transit down the Indus is improved and the railway is finished to Mooltan. Of that I have no doubt. And we shall certainly reap a good revenue from the imports which are received in return. The transit and export duty on wool, which we thus relinquish, are equal to about £17,000 a year, by placing it in the free list. Then, Sir, there are two articles of considerable export which arose chiefly in consequence of the Russian war—I mean the articles of hemp and hides:—the competition which these have to bear in the home markets with the products of other countries, makes the export duty bear heavily upon them, and they are both articles of trade, which, for many reasons, we are especially interested in encouraging. We propose to place them also in the free list. The duty which they yield at present is a little over £16,000. Then, again, the article of jute is in the same category, it is one of the great raw materials used in England, which competes with the coarse hemp of Russia, and the production of which it is much our interest to promote. This also will be placed in the free list: the duty is £15,000. We also propose to place flax in the free list, in order to give every encouragement to the incipient efforts to make that an important article of produce in the Punjab, which I doubt not will ultimately be successful. Then again, Sir, there is an article which is engaging, and justly so, much interest—I mean the cultivation of tea. The experiment made by the Government, at a great cost of introducing it as an article of cultivation on our high lands, has proved eminently successful; so much so that steps are being taken to hand it over entirely to private enterprise. It is one of the few means which we have in India of attracting European capital and European settlers. Sir, we ought to extend to it every encouragement in our power, and it certainly seems in the highest degree inconsistent that we should be spending public money to encourage the cultivation of this plant, and then to place an export duty upon it at our ports when it has to be shipped to find a market in competition with the produce of our next door neighbours in China. The duty upon the export of tea is only £2,500, and it also will be placed in the free list. There is still one other class of articles which we think ought to be free of duty. Books are already free, and we think that prints, maps, and works of art should be included:—the duty they give now is very trival, little over £1,000. The reductions, therefore, which we propose in our present Tariff for the reasons I have explained are—

1.	Loss on 20 per cent. duties ...	30,000
2.	Wool, free	17,000
3.	Hides and Hemp, free ...	16,000
4.	Jute, free	15,000
5.	Flax, free	.....
6.	Tea, free	2,500
7.	Prints, Maps, &c., free ...	1,500
	Total ...	£ 82,000

making a total loss of eighty-two thousand pounds.

But, Sir, we have some per contra proposals to make in respect to the Customs duties. In the first place, there is one article which is produced almost exclusively in India, and which bears a large price and a high profit—I mean Saltpetre. This article can scarcely be said to stand in the same position as many other articles which are produced by the cultivators of the soil. It is in point of fact a manufacture from earth. It has been represented to me, both at home and here, that this article would bear a duty of £10 a ton, without any danger of its being interfered with by foreign competition. It has long been under consideration in the North-Western Provinces, where it was proposed to impose an Excise duty upon it. Sir, I prefer an additional Export Customs duty. I do not, however, go the length of the rate suggested. We are content to try the experiment with a duty of two Rupees a maund, which will be about £5-10 a ton. The quantity exported from Calcutta is about 800,000 maunds, and from Bombay about 100,000 maunds, making a total of 900,000 maunds, which will give £180,000, or an increase of £164,300. I should mention that we propose to give an advantage not hitherto enjoyed by the saltpetre refiners, by allowing them, subject to paying the duty, to turn to profit the salt which is necessarily made in the process, and which hitherto has been wasted. I have fully discussed these arrangements with the Revenue Board at Allahabad. Then, Sir, we propose to raise the duty upon unmanufactured tobacco to 8 annas the seer and manufactured tobacco to 1 Rupee the seer. The special bearing of this proposal I shall explain hereafter. This will give us £25,000. And now I come to mention the last change which we propose in the Tariff, and it is the only one which I make with regret. But necessity has no law. I must own that, after due consideration, we can discover no good reason why cotton yarn and twist should be imported at a lower rate of duty than cotton piece goods. I know it is said that it is in an earlier stage of manufacture; but may the same not be said of grey cloth, as compared with bleached and dyed cloth and printed cloth? If we are to have an average duty, it should be an average throughout, nor do I attach much importance to the argument that a low duty on yarn, and a higher duty on cloth, encourages native weaving. I could find those who complain that their labour in spinning fine yarn by hand is interfered with by a lower duty on yarn. But I attach little importance to that class of arguments, and I believe that the same duty of ten per cent. may be placed on yarns as is charged on goods, without any perceptible injury to the trade. The trade in both articles appears to be progressing rapidly. By the last Mail we received the official accounts of the trade for the eleven months of 1859. According to those returns the exports of cotton piece goods to India had reached the large amount of £11,041,000 in 1859, against £8,497,000 the year before, and £5,147,000 in 1847. So in the case of yarn, the exports in 1859 were £2,306,000 against £1,763,000 in 1858, and £994,000 in 1857. I wish, indeed, it had been in our power to reduce all to the limit of five per cent., but that is impossible at present, whatever may be the case hereafter. I wish, however, to say in reference to this increase of the duty upon cotton twist and yarns, that, inasmuch as it is sometimes the practice to sell by contracts for future delivery, in all cases in which it can be shown to the satisfaction of the Customs authorities, that twist that has actually been

shipped at this time, or that has arrived, has been sold subject to the existing duty, such goods will be admitted at the present rate of five per cent. The practice no doubt in England is to levy the duty from the moment of its enactment, giving the seller the power to recover from the buyer; but it may be borne in mind that, when duties are raised in England, they generally affect articles like tea and sugar, of which stocks in bond exist, equal to many months' consumption, if not for a whole year. In the case of cotton twist, the concession which we make, we are aware, can only at most affect a small quantity, nor is this course without precedent. When the tea duties were equalised, all the Bohea quality, proved to have been shipped up to a given date, was admitted at the lower duty of 1*s.* 6*d.* the lb. By these changes we shall have a tariff imposing one single uniform *ad valorem* duty of ten per cent. on all articles subject to duty, except beer, spirits, wines, and tobacco, which will continue subject to the same specific duties as they are at present. We compute the gain upon these articles at £233,700, cotton twist giving an additional revenue of £67,461. I would here wish to call your attention to a very important distinction, a distinction which ought never to be lost sight of by statesmen, between the incidence and consequence of import and of export duties. With regard to an import duty, all that you can generally say is that it adds to the cost, and is a tax on the consumer. No doubt, if unduly high, it may limit trade, as has been the case with our twenty per cent. articles. But with regard to export duties on articles which have to compete with the products of similar articles from other countries in neutral markets, the first effect no doubt is that the export duty acts to that extent as a reduction of the price paid to the producer, and is a special tax and discouragement to him as a producer; but a further and serious danger is that your duty may exclude the article from the foreign market altogether, act as a prohibition, and thus put an end to or greatly limit the production and the demand for labour. Sir, it is this obvious distinction that has made us so desirous to relieve our exports as the best means of improving our internal resources. And, Sir, when we reflected that England had thrown open her ports to the free admission of these articles from every part of the Globe, that there is some reason for believing that France is about to follow the same wise policy, and that the articles with which we have dealt are the raw materials of the great manufactures of Europe, and therefore capable of unlimited extension —we believed we could not in any way better contribute to our own interest, than by taking this course. Sir, we repeal duties giving £82,000, but we recover by other duties, in a way unobjectionable, £233,700. But there is another source from which we look for an increased income. The valuations upon which the duties have been paid have hitherto been notoriously too low. They are now being revised, and the result, I expect, will be that the revenue will be improved by at least £150,000. When this revision is completed, the Government intend to take steps to apply a uniform valuation to all India. We pass the same tariff of duties for every port; but if, as has been, and is still the case, the valuations to which the *ad valorem* duties are applied are different at every port, it results in point of fact in different duties in every port; and the competition between the merchants of one port and those of another is thus rendered unfair in the interior markets.

Sir, I do not think that I shall overestimate the gain to the revenue by these revised valuations as a whole, if I take it at £200,000. If this be correct, then we shall have an increase of customs upon the whole of £433,700, subject to a deduction of £82,000, giving a net gain of £351,700, after releasing from export duty almost all articles which constitute the raw materials of our manufacturing industry at home, and which, as such, have to struggle against the competition of other countries. In all these cases the articles are included both in the free import and export list, in order to allow them to pass through, from Native States, without duty, to the port of shipment. Sir, I believe it will be found that in these changes we have made only timely concessions to the necessities of trade, and that they will re-act most beneficially upon the interests of the cultivators of India. It has often been suggested to us that a large export duty might be laid upon indigo upon the same principle that we have applied to saltpetre, because it was exclusively produced in India. Sir, that is an error. There has always been a rival production in Mexico, and that production I observe has greatly increased in the last few years. But were it otherwise, I should doubt the policy of increasing the duty; like tea, it is one of the few cultivations in India which attract British capital and skill to direct native labour. That is the kind of industry which above all others the Government would wish to encourage, and on that account alone they would feel precluded from placing any impediment in the way of its extension. It would be more in consonance with our views to remove what little duty there now is, as soon as circumstances will permit. The value of the influence of European gentlemen settled in our country districts cannot, in our opinion, be over-estimated, and it will be the stedfast policy of the Government to encourage it in every fair way we can. Sir, I propose to move the suspension of the Standing Orders before I sit down, in order to enable me to introduce a Bill to-day to effect these objects; for it is obviously desirable that no interval shall be allowed to elapse before the changes take effect, and as they are mostly concessions, that course will be to the clear advantage of the merchant.

Sir, we do not propose these measures so much as a means of meeting our difficulties as of laying the foundation for increased prosperity in the future by relieving Agriculture, as well as Commerce, from restrictions and imposts which, while they give but little to the Exchequer, may prove serious impediments to our future progress, at a time when, as I have before said, all these articles have been admitted free of all duty to the English market, when there is good reason for believing that the French Government contemplates a similar policy, it would indeed be unjustifiable in us if we were to exclude our producers and our merchants from sharing in common with all other nations in these advantages, by retaining export duties on those articles which have to compete with the products of all the world.

But now, Sir, I have to recall your attention to the main object of the measures which I, on the part of the Government, will have to propose. I must remind you that the proposals I have made, and the measures I have explained, however valuable in themselves, and however much we may fairly hope they will conduce indirectly to the fruitfulness of the revenue in other ways hereafter, yet will do but little to meet our present emergencies. I must remind you that we have

still to deal with a present deficit of about nine millions, and a prospective deficit, after making allowance for considerable reductions of upwards of six millions—I must remind you also that I have shown you, that it is not only with this great and accidental difficulty that we have to deal, but that the normal condition of the finances of India is one which is not creditable to a Government: that in by far the great majority of years during the whole of this century, we have been creating deficiencies and adding to debt. Well, we call upon you and upon the public to aid us to correct this state of things. We will do our best to reduce expenditure and to improve the administration; but when all that is done, it will not be enough. We are, Sir, therefore, reluctantly compelled to propose to increase the revenue by the imposition of new taxes; and these we propose to be of two classes—the one we shall propose to enact only for a limited period, with a view to the present emergency—the other, we propose to ask you to pass without limit of time. In selecting new sources of revenue, the Government are very much impressed with the fact that hitherto a large share of the revenue has been derived from land, and that the practice of revising the assessments periodically has at least had the effect of keeping the actual cultivator always at a rack-rent. We therefore think that, whatever new taxes we impose, the incidence should fall mainly upon other classes. There is no doubt that merchants and bankers and others can hardly be said to have borne their full share of the burdens of the State heretofore. Much discussion has taken place as to the best form in which new taxes can be imposed; much has been said as to the Native aversion to taxes. Sir, all people are averse to taxes. Burke said in the House of Commons, "It is as difficult to tax and to please, as it is to love and be wise." I do not believe in the popularity of any tax. I do believe in the preference which the wealthy native trading classes give to those taxes which they can shift to the shoulders of others. If we are to consider the Natives, which we ought, then I have shown you that their sacred writings give us ample latitude of choice. But, Sir, we must at once resist and reject a return to the old system of internal and transit duties, when every zemindar had a Custom House at the entrance to his own village. Sir, we cannot consent to allow all the efforts which have been used to abolish so prejudicial a system to go for nothing, and to revert to it, as we have been advised, because it is an easy mode, and in accordance with antient usage. No, Sir, whatever we do, whether our success be great or little, whatever our progress may be, at least let it be in the right direction. Sir, my Honorable friend opposite introduced in August last a Bill for imposing a license duty upon Trades. The difficulty of my Honorable friend's proposal soon became apparent. If he had confined his demand to a small uniform license, which could alone be paid by small dealers, then not only was the amount of revenue to be derived from such a tax entirely inadequate to the demands of the State, but it was evident that the wealthy traders and bankers, who have so chiefly benefited by our rule and by the order and security we have maintained at so much cost, would contribute nothing in proportion to the exigencies of the State. To cure this, it was proposed to graduate the tax, and to charge it in proportion to the gains of traders; but then, Sir, it was evident to my Honorable friend, and he pointed out the difficulty at the time, that as soon as that

plan was adopted, he was landed in all the difficulties and intricacies of Schedule D. of the income tax: not only was this so, but another difficulty presented itself:—if the license duty were of small and uniform amount, traders would not have complained of it; but as soon as it was made proportionate to their incomes, then they not unnaturally complained that they were selected as the only class to be taxed, and my Honorable friend yielding to the force of these representations consented to introduce other classes; but still there were some classes excluded, and who could not in fact be included. Sir, I have had many and very frank communications with my Honorable friend, and I again tender him my best thanks for his ready advice upon all occasions; and I believe I may say that he entirely concurs in the decision at which the Government has arrived, that the objects embraced in that Bill will best be dealt with separately, and that they should be the matter of two distinct Bills. Sir, it is the opinion of the Government that an income tax, to be just, ought to be universal and equal in its application to all alike, within a certain limit of income. We could not justify such a tax upon any other conditions. But while we say within a limit, we do not mean that the pressure of taxation should not be as wide as possible. In England the lower classes are subject to heavy indirect taxes almost unknown in India. Upon tea, sugar, tobacco, spirits, malt, and other articles, consumed in a great degree by the working classes, the English Government collects a revenue nearly, if not quite equal, to the entire present revenue of India. We are of opinion, therefore, that a small and almost uniform license duty should be imposed upon traders of every class, high and low, but without any attempt at graduation. In a great majority of cases, it will operate rather as a registration tax, and only on the lowest classes, who will be exempted from income tax by reason of their small incomes, will it be really felt as a tax. I have here a list of the license duties on trades collected in England. They include in all no fewer than one hundred and sixteen different rates; some of them are as high as £78, and some as low as a few shillings. I find that one class of brewers pay £78-15, that bankers pay £30, attorneys £9, pawnbrokers £15, auctioneers £10; and other classes various other sums: and all this in addition to income tax. Sir, we shall be comparatively moderate in our demands.

With one exception, to which I shall presently refer, these are the taxes which we feel called upon to propose to you: the license duty to be passed without limit of time, the income tax to be taken only for five years. The license duty we propose to be extremely moderate. It will consist of three rates—one rate of one Rupee a year on artizans, including weavers, leather workers, and similar trades, but excluding the agricultural menial classes in village communities, who are attached to them and are generally paid in grain:—four Rupees a year on retail shopkeepers and small manufacturers, who work for local retail sale:—and ten Rupees on wholesale traders, bankers, manufacturers, and professions. These rates of one, four and ten Rupees will be uniform, and apply to all of each class without any discrimination as to incomes or extent of business.

These licenses will be taken out at the beginning of each year, and thus a complete register will exist of trades, as we have at present of the occupiers of the land; and this will be no inconsiderable check against evasion under the income

tax: for let me remark that whenever such evasion takes place, it forms an act of injustice to the rest of the community, and it is our special duty to take security against fraud of any kind. Then, with regard to the income tax measure, we propose that it shall apply to all incomes above 200 Rupees a year. Sir, the wider you can spread the incidence of your taxation, so long as a fair proportion is maintained as to the means of different persons, the more just it is as a whole. The security of the Government extends to all classes:—all classes, from the richest capitalist to the humblest labourer, as I have already shown you to-day, have shared, and must share, in the prosperity which good order and security can alone insure. But, Sir, we propose that incomes from 200 to 500 Rupees shall be taxed at a somewhat lower rate. This we do, because if, at the same rate, the double action of the license duty and of the income tax upon this class of incomes would be rather more severe than in other cases. We put incomes from 200 to 500 Rupees at two per cent. Sir, while we are mindful of the wants of the Central Government, we are not forgetful of the many pressing demands throughout India for local improvements. There is nothing that strikes a stranger so much as the great advantage which a little outlay would be in improving localities, and to this the trading facilities in Calcutta form no exception. On incomes above 500 Rupees, we propose a tax at the rate of 3 per cent. for the public treasury, and of 1 per cent. to be appropriated strictly to local purposes; and in regard to the appropriation of which, where municipalities exist, they will have a voice: the charge will be very small, and the good to be derived from such a contribution may be very great. In the United States, which boast of the freest Government in the world, a property tax is collected by the Government of each State of a considerable amount, and applied in part to general, and in part to local and municipal purposes. When I introduce the Bill, I will explain its provisions in detail, but in the mean time there are certain broad principles in it, to which I think I ought now to refer. It will consist of four Schedules. No. 1 will include incomes derived from real property; No. 2, incomes from trades and professions; No. 3, incomes from the public funds; and No. 4, incomes from public salaries. The English Act contains five Schedules in place of four: the fifth, that is Schedule B, being applicable to farmers, a class which cannot be said to exist in India, for no one would dream of applying an income tax to the ryots—first, because there is no one who would not come within the exemption; and, next, because, by periodical revisions, their payment to Government is kept at a rack-rate. Otherwise, Sir, there is no exemption whatever of any class. I am aware that much discussion has taken place from time to time as to the right to tax the zemindars and other intermediate proprietors under the perpetual land settlement. Sir, the Government have given their most attentive consideration to this claim of exemption, and I must say, the more I have looked into it, the more I am convinced that a more illusive claim could not be set up. But, in a matter in which the good faith of Government is concerned, it behoves us to be scrupulous, and to show at least the grounds for our decision. On what, Sir, does this claim chiefly rest? As far as I can discover, on little more than an incidental expression in a Despatch from the Court of Directors to the Government of India in 1792, enjoining economy on the latter, because the land revenue described as "the great and now almost the only

source of revenue" had been fixed. Now, Sir, no one has ever denied and, I am sure, never will deny, that, so far as the rent of those lands goes, that is fixed and unalterable as long as the conditions are complied with. But was it ever in the mind of Lord Cornwallis, when he proposed and made that settlement, that the fortunate owners of that part of India should be exempted from any general tax that the necessities of the State required? I will show you in his own words, that the very contrary was his intention. The settlement, as first made by Lord Cornwallis, differed in no respect from an ordinary settlement of land, except that it was made for ten years in place of being annual, as was then the practice. The Court of Directors approved that it should be made permanent, and Lord Cornwallis issued a proclamation, fixing the ten years' settlement for ever. There is not one word as to exemption from taxes. No one can read the luminous Minutes of Lord Cornwallis upon the subject of this settlement, without seeing that the only object he had at heart was to get rid of the uncertainty and insecurity which attended the tenure of the land, as held from year to year, or in short periods. This, and this alone, runs through every passage of that remarkable and able controversy, if I may be allowed the expression, which took place between his Lordship and his most astute colleague, Mr. Shore. But that his Lordship never confounded what he was doing with a liability of the zemindar to be taxed for State purposes, and that he regarded these two as entirely distinct questions, may be gathered from his Minute of the 3rd of July 1790, in which he says:—

"The supreme power in every State must possess the right of taxing the subject, agreeably to certain rules; but the practice which has prevailed in this country for some time past, of making frequent valuations of the lands, and where one person's estate has improved, and another's declined, of appropriating the increased produce of the former, to supply the deficiencies in the latter, is not taxation, but, in fact, a declaration that the property of the landholder is at the absolute disposal of Government. Every man who is acquainted with the causes which operate to impoverish or enrich a country must be sensible that our Indian territories must continue to decline, as long as the practice is adhered to.

"The maxim, that equality in taxation is an object of the greatest importance, and that, in justice, all the subjects of a State should contribute as nearly as possible in proportion to the income which they enjoy under its protection, does not prove the expediency of varying the demand of Government upon the lands; on the contrary, we shall find that, in countries in which this maxim is one of the leading principles in the imposition of taxes, the valuation of the land on which they are levied is never varied."

He afterwards adds,—"It is evident therefore that varying the assessment on the lands is not the mode of carrying into practice the maxim that all the subjects of a State ought to contribute to the public exigencies in proportion to their incomes, and that other means must be employed for effecting this object."—*Minute 3rd July* 1790.

To my mind nothing can be more explicit as to his intention and meaning. He distinctly refers with approval to those countries where the taxes are levied in proportion to the income which each enjoys, as being perfectly consistent with a fixed valuation of the land on which they are valued. He could hardly have stated in more precise general terms that the Zemindary assessment of rent should be fixed, but he must contribute an income tax levied on that land in proportion to his income, if general, and on the means of all others. Those who hold the same opinion that I do with regard to this subject have very properly referred to the land tax in England, which has long been commuted for a fixed rate, and in many cases redeemed; but no one ever dreamt of claiming exemption

from the income tax on the score that it was indirectly a charge upon the land, because it was assessed upon the rents. But, Sir, we have a far stronger case of analogy in England. In every Loan Act, by which the huge National Debt has been contracted, there is the following distinct provision, that is, it is inserted in the 23 Geo. II. c. 16, and imported into every subsequent Act down to the loans for the Russian war :—

"23 Geo. II. c. XVI., Sec. IV.—And it is hereby enacted by the Authority aforesaid, that all and every contributor and contributors upon this Act, duly paying the consideration or purchase money at the rate aforesaid, at or before the respective days or times in this Act before limited in that behalf, for such annuity or annuities as aforesaid, or such as he, she or they may appoint, his, her or their respective executors, administrators, successors, or assigns, shall have, receive, and enjoy, and be entitled by virtue of this Act, to have, receive and enjoy the respective annuity and annuities so to be purchased out of the monies by this Act appropriated or appointed for payment thereof as aforesaid, and *shall have good and sure estates and interest therein for ever*, subject only to the proviso or condition of redemption, in this Act afterwards contained, concerning the same; and *that all the said annuities to be purchased on this Act, and the principal monies paid for the same, and every of them, during the continuance thereof, shall be free from all taxes, charges, and impositions whatsoever.*"

When Mr. Pitt first introduced his income tax, and upon subsequent occasions, there was much discussion as to the exemption of the funds under this clause. But, Sir, it was ruled that, in a *general tax upon income*, the exemption did not apply, however applicable it might be to any special tax upon the funds. Sir, the case of the Bengal zemindar is not near so strong: he had no promise of exemption whatever; yet to him I apply the same principle as was applied to the fundholder in England. I hold him to be exempt from any special charge upon his land, but to be liable to any general tax that applies to all others. And, Sir, I contend for this view as one of high and paramount policy, as well as of strict right. India has a great future before it under the firm but just administration of the Crown of England. The only nobility which India now has, or is likely to have, must chiefly be these wealthy owners of permanently settled estates, the whole improved value of which must go exclusively to them, while in all other parts of India the Government on the part of the public will share it. Well—but, Sir, are we to base a future policy upon the exemption from taxation of the richest and only privileged classes in India? Let any one read that remarkable volume by my late lamented friend, M. de Tocqueville, on the causes of the French Revolution, and he will understand how dangerous is such a policy. Let us, Sir, once and for all, determine this groundless claim upon which so much controversy has existed, and let us accept and adhere to the sound maxims laid down by Lord Cornwallis himself, "that all who enjoy the protection of the State must pay for it in accordance with their means." Sir, that is the only true policy of Government. But, again, some have, I am aware, also contended for an exemption on behalf of the fundholder. Now, I am at a loss to understand on what ground that claim can be put forward in India. There is no stipulation such as I have quoted as applying in England, and yet even there no exemption is allowed. I certainly would never consent to be a party to place a *special* tax on the funds, because indirectly that would be reducing the obligation of the State; but in the case of a general tax, no such argument applies; and, Sir, when I reflect that the great object of the effort that we are now making

is to improve the credit of the State, and as a consequence to raise the value of the securities held by the public, I must say, that, as a class, the fundholders ought to accept this tax more cheerfully than any others. Well—but, Sir, I have yet to notice one further claim which has been made for exemption, so utterly untenable, that I should not have even alluded to it, unless I had seen it cropping out in official documents as being encouraged by gentlemen of influence. Sir, I refer to this with the deepest regret. But it is my duty to do so. Sir, our fellow-subjects in Madras and Bombay claim exemption from increased taxation. And on what ground? It seems incredible. Because they say our financial difficulties have been occasioned by the Mutiny: the Mutiny took place in Bengal; and therefore we in Madras and Bombay are not liable for its consequences. Sir, are we all one people, one united dependency under our Gracious Queen, or are we not? Was the Sepoy Army maintained for local or for imperial purposes? What would be said in England if, unfortunately, a portion of the British Army had mutinied in Ireland, had encouraged and led to insurrection, had caused great cost to the imperial exchequer, and when Parliament was applied to for means of discharging it, the Members from Scotland had objected and claimed exemption for themselves, on the ground that the cost was incurred in Ireland? But let us ask our friends in Madras and Bombay to consider to what logical conclusion their argument would lead? If they are to be exempt, are those only to be subjected to the penalty who, unfortunately, living near the scene of those occurrences, had not only all their earthly property destroyed by fire, but who suffered far more serious losses by the sword? Surely not. But who then? The guilty sepoys alone? That is the logic—a logic which, if applied to Government, would show that the whole cost of the criminal law should be defrayed by the convicts who fill our jails. Sir, I sincerely trust we shall not again be met with this argument. The Supreme Government of India is as much the Government of Bombay and the Government of Madras as it is the Government of Bengal. Our duty, and that of this Council, is the same to all alike. We want greater combination and unity, not greater severance—that is the end to which we direct our aim. But, Sir, if all this were not so, if we were to settle accounts on nothing but arithmetical rule, how stands the case? Notwithstanding the fact that, from the Calcutta Treasury is paid the whole of the interest of the debt and many other imperial charges, yet what do I find? I have told you that the Indian deficit of the present year is £4,063,809. How is that distributed? In round figures the sum of £1,500,000 applies to Bengal, and that of £2,500,000 to Bombay and Madras. Again, if I compare the increase of Military charges alone in the three Presidencies at the present moment, as compared with 1856-57, the increase in Madras and Bombay is as great as it is in Bengal. And if I compare the number of Troops according to a return recently furnished to me in 1857, and at the close of 1859, in the different Presidencies, I find the increase in Bengal barely five per cent., while in Madras it is fifty per cent. and in Bombay thirty per cent. But I should say these returns do not include the Military Police, the Civil Corps, and New Levies in Bengal, nor the new Police in Madras: they are confined to the troops under the Commander-in-Chief of each of the three Presidencies. But, Sir, I am ashamed

to argue this question upon such small and sectional grounds. We are one united great dependency under the same Sovereign, and we have one clear duty before us—to unite with all our efforts and all our means in maintaining Her Empire prosperous and inviolate. The bane of India has been these sectional principles and pretensions. Let us see an end to them, and feel that we are all one for weal or for woe. But returning to the Bill, I wish to make one remark as to the mode in which we propose to charge the zemindars who are subject to periodical revisions. We desire, in every way, to make the operation of the Bill as simple as possible; as a rule, the whole of the North-Western Provinces have been settled in the proportion of sixty-six per cent. to the Government and of thirty-four per cent. to the zemindar: that is the old rule. The new rule, which has scarcely yet come into operation, is fifty per cent. to each. But, taking the actual proportions of sixty-six and thirty-four per cent., we propose to assess the zemindars at one-half the rent they pay to the Government as their profits in respect of land. By this arrangement, simple and easy in its application, all zemindars who do not pay to Government 400 Rupees a year will be exempt. We are quite aware that, in practice, very few zemindars in the North-West will pay income tax, and when we consider their relation to the land, and that their payments are always subject to revision, we think their exemption falling under a fair and general rule is not to be regretted. But the same measure of profits will obviously not apply to the perpetual settlement. As to the general provisions of the Bill, I would say that our aim has been to make it as nearly the same as that of England, as the difference of circumstances would permit. In this I have had the valuable aid of our most able and learned Advocate General. I have carefully gone over the English Bill, and the regulations by which it is carried out, Clause by Clause, with Mr. Ritchie, to whom I beg to express my warmest acknowledgments, and adapted our scheme as nearly as possible to it. We have been most careful to preserve all the checks in favor of secrecy:—we impose the same oaths for that purpose upon all our Officers:—we furnish a special commission to whom traders may apply to be assessed, without their returns going through the general commission and public office. There is not one protection which the English Bill affords which will not be found in ours. But, Sir, there is an entirely new provision and one of the utmost importance. As you know, the great difficulty in respect to an income tax in India is in relation to the traders in the native towns:—we are desirous in every way of avoiding inquisitorial practices, we wish to avoid the necessity of exhibiting accounts and books. Our general provision in the Bill for assessing profits is the same as the English Bill, by voluntary returns made by the traders to the Commissioners to their satisfaction. But we propose to allow the Government to approve of any other method of assessment which may be proposed by the Commissioners of any district as more in accordance with the habits and wishes of the communities, provided always they are satisfied that the result will be fair. By this means we hope to shape the practical working of the tax through the aid of Punchayets, and by using largely the instrumentality of the heads of towns and trades under the supervision of our own Officers, so as to make it of comparatively easy operation. All that I need now say further is that every possible means will

be used to avoid undue interference in any way whatever. Another most important provision which we make is this. In order to avoid the annoyance of annual assessments, we give power to the Commissioners to compound for a fixed sum for the whole period of five years, or for any number not less than three. This provision, I have reason to believe, will be very satisfactory to the native traders and capitalists in particular. There is such a provision in the English Act. The only other tax that we propose is a duty on home-grown tobacco, to an amount as nearly corresponding with the import duty as possible. I am aware there has been much discussion in respect to this duty: I am aware that opinion is not altogether unanimous upon the subject, but it is very nearly so: and the objections of those who have opposed it have been confined chiefly, I think, to the difficulty of levying it. Sir, when a Minister in England complains of the difficulty of a task, he is not unfrequently told that he occupies his high office for the purpose of overcoming difficulties—let us accept the same obligation. I hope within a short time, when my hands are less full, to offer a measure to this Council, which it will approve for this purpose. But here, again, I must offer an observation with reference to the pretensions set up by the perpetual settlement landholders It is said on their behalf, that you cannot tax tobacco in its cultivation, because that would indirectly be increasing the rent of land. Sir, whether this is the best mode of levying the duty, I do not stop now to enquire, but at least I cannot accept this argument against it. What would be said in England, if a farmer who held Crown lands at a fixed rent for 30 years—and if the argument is good at all, it would equally apply in this case—were to seek exemption from the tax on barley malted, because it indirectly raised his rent? Sir, I entirely agree with the able minutes of the distinguished Lieutenant-Governor of Bengal (Mr. Grant) upon this subject, as to the matter of right, and I hope that now and for ever all these pretensions on behalf of that fortunate class will be put to rest.

These, Sir, are all the taxes the Government propose, and I trust I may say that they cannot at least be found fault with, as in any way infringing the rules which I laid down for our guidance. I hope I may say that they are equitable and just to all alike: that they infringe no principle of wise legislation: that they offer no impediment to future development:—I hope, upon the whole, that we may rather take credit for removing some existing impediments to industry and trade. But, Sir, moderate as our proposals may be, and based as they are upon perfect equity and upon undoubted necessity, we cannot expect them to be received without some opposition:—some may even think of risk and danger. But even though this were the case, in the apprehension of which I do not share, it is our duty to incur it: certain it is that as we are, we are incurring the greatest danger from the deranged state of our finances, and we should be shrinking from the imperative duty we owe to the State and to the people of India, if we did not use every means in our power to apply an adequate remedy; and, Sir, I cannot help thinking that when the case is well understood, when the perfect equity of our proposals are known, when it is understood that every public servant of the Crown, from the Governor-General downward, will contribute equally his share to their taxes, and when if I may take so great a liberty to assume from the liberal manner in which Her Majesty the Queen acted

in respect to the income tax in England—if even Her Majesty does not contribute, it is only because she, unlike any other Sovereign who ever reigned over India, does not exact from her subjects one single Rupee for her own uses. I say then, when all this is considered, I would fain hope that our proposals may prove as acceptable as we can ever expect taxes to be.

Sir, for your sake and my own, I wish I could now conclude, but there are two points upon which it is imperative I should make some observation. First, I shall fairly be asked what we expect to receive as the result of these taxes, and how far they will succeed in repairing our financial position. Sir, fortunately for India, but unfortunately for my present purpose, there is absolutely no data upon which any reliable calculation can be made. So entirely exempt has India hitherto been from taxation, that we have no means of making a computation. But this I will say, that we are not sanguine enough to expect that these taxes alone will cover our deficiency:—for we should indeed think that we failed in our duty, if for that purpose, we had relied exclusively upon new taxes:—we shall still have left a large margin, for which we must rely upon the economy which we can secure by retrenchment of expenditure and administrative reform, for both of which we admit that there is ample room.

Sir, in considering the sources where we may look for reduction of expenditure, I am bound to say that we do not see any ground for expecting much with respect to the civil administration of India. When it is considered that the imperial expenditure of India includes much, if not all, of the whole local Government of India, which in other countries is usually defrayed from local funds, I believe it will be found that in no other country is the civil administration conducted at so small a cost. We do not believe that this part of our Government can be reduced in cost. We rather incline to think that it is more likely to be increased by improved Courts of Justice, by means for education, and by a stronger administration in the country as local interests become developed. We believe that great improvements may be made in the constitution of our offices, and many anomalies even in the existing scale of remuneration . but on the whole we look for no reduction on this score. What we want is an organisation which will give a more efficient development to the great talent which undoubtedly does abound in the Indian Civil Service at this time.

But, Sir, if we turn to our Military Departments, we are sanguine that a great reduction can be made, not indeed in the pay and emoluments of either the Officers or the men, but in numerical strength, by a better distribution of our forces, by control in our Commissariat and Military expenditure, which at present as a whole is weak and diffuse, and by reducing our Army Finance to order. Sir, I may only refer to the entire uncertainty which at the present moment prevails as to the present or future expenditure under these heads ;—I may even say of past expenditure for a year or two after the time, to show you how imperatively this reform is demanded ; and we look for great assistance in this respect from the able Military Financial Commission which is now investigating these questions, and from whose labours we have already derived much benefit. Again, it would not be right if I did not here acknowledge, in the strongest terms, the public spirit which both Lord Clyde and General Mansfield have shown in affording us

every advice and assistance in their power, in order to effect the objects we have in view. Sir, we believe that the first thing to be done as the great foundation of Military reform is to relieve the army of all ordinary civil duties, such as prison guards, treasure guards, and treasure escorts; and this can only be effected by the establishment, upon a sound principle, of a general Police force, sufficiently flexible to be adequate for all the *quasi* Military duties to which I have just referred, to be able to act in small masses to quell disturbances within their own districts, and to act generally in small detached bodies throughout their districts for purely civil ordinary police purposes, under the direct control of European Officers, but the whole subject to the civil power as the police now is, and to contain within the force the picked men set apart for detective purposes. Sir, with such a police established, such nearly as Lord Harris proposed before he left Madras, and which Sir C. Trevelyan is now organising, I believe the numerical force of the whole army may be quickly reduced, and especially that of our Native Army. Sir, there never was before a period at which I believe the army could with perfect security be so much reduced, if we only can dispense with whatever may yet be doubtful among our Native Troops. Our frontiers are now all well defined, and of themselves, with slight exception, offer a natural barrier. The Native States within India are not only on the best terms with us, but their interests are so much now bound up with our own, that we have perfect security there. The people themselves are peaceful and tranquil, and only wish to be permitted to follow their calling in security. They have obtained a terrible lesson from the anarchy which prevailed wherever, for however short a time, British authority was suspended; and, lastly, Sir, the Sepoy Army—which so long has been our real danger in India, which so long has been, if not a standing menace, at least a standing source of apprehension to our farest seeing statesmen—has at last dissolved itself: an army petted and spoiled by indulgences inconsistent with discipline—a close body, self-recruited by the men themselves with brothers and cousins, and relatives, of which many understood the danger, but which none had the boldness to incur the risk of dealing with: that army has disappeared and is blotted out. Sir, this Frankenstein, which at one time was only alluded to, in bated breath and in a whisper, when it was discussed as a source of insecurity, has committed suicide, and can be spoken of openly, and all its errors exposed. I hope the example it has set, the experience it has given us, will never be forgotten. Our local European Army also is gone. Sir, I fear that, however able and gallant many of our local Officers have proved themselves, however much they may have entitled themselves to the gratitude and admiration of their country, I fear, Sir, we must own that the Government of India has been as unfortunate in its military, as it has been in its financial system. To go into the question of the Army as it affects at present our finances, would be a subject so large, that it would occupy me nearly, if not quite as long, to do justice to it as I have now already detained you.

But, Sir, there is one point upon which I must remark. Until we have one central point of responsible control of Army finances, as of all others, established, it will be in vain to expect great reduction. Our first course must be to consider carefully what force is sufficient, and not more

than sufficient. Our next point must be to have carefully revised estimates, what is here improperly called a Budget System, for Military and all other charges, submitted to the Supreme Government annually, as they are in England to Parliament, to sanction only what is necessary, and strictly to keep every province and every department within their limits. Till you have this central financial and revenue control, it is in vain to look for economy—when you have it, you may safely give much greater executive responsibility to local authority. Sir, in England there is more local Government than in any country in the world; but there is no country where the central authority and control of the Government itself is so strong. And, I will add, that it will be in vain that we make improvements and reforms in our finances, if these administrative reforms do not take place. You must rely upon a sound system if you will have permanency, and not upon any individual, especially in a country where individuals change so rapidly. Sir, this is nothing new. You have had Finance Commissions over and over again. What have they done? In looking over the archives of the Government of India, I must say that the Minutes left on record of no Governor-General have struck me with more force than those of Lord Ellenborough, and they have induced me to regret that his stay in India had not been longer. That noble Lord is a distinguished member of a great party, always opposed to that with which I have had the honor of acting; and my testimony may therefore be regarded as impartial. Sir, that noble Lord saw and understood the evil of which I speak: he warned the Court of Directors of it. On the 7th of August 1842 he wrote as follows:—

"But I cannot withhold from the Honorable Court the expression of my decided and long formed opinion, that whatever diminution may be made by my exertions in the amount of expenditure, will only be of a temporary character, without an entire change in the Financial Department, and some very material modification of the system of carrying on the Government. There is now no one Officer charged with the duty of viewing the expenditure of the State as a whole, and of considering every proposed or existing item of charge, not by itself only, but with reference to the total charge upon the revenue.

Without this concentration of duty and authority in a really responsible Officer, I have no hope of giving permanence to the influence of economical principles in the Financial Administration of India, or of even dealing satisfactorily with the details of expenditure."

Sir, this is exactly what I would say now. No doubt an attempt was made, but most feebly, to supply a remedy. A financial department was created, I think in 1843 or 1844, but without any real power or responsibility. Sir, you cannot exact responsibility without giving power, and you ought not to give power without exacting responsibility. Will it be credited that the officer who had to administer the finances, was confined to the disbursement of public money, without either power or even cognisance in any shape of the revenues by which the treasury was to be supplied. Sir, we are now engaged in applying a remedy to this anomaly. In order to show how much our Army Expenditure is capable of reduction, I have only to compare the expenditure of the current year with that of 1856-57, for Army, Military Police, New Levies, Police and Military Public Works. The cost in the last four years for all India was:—

1856-57 ...	£ 13,213,454
1857-58 ...	£ 17,215,674
1858-59 ...	£ 24,717,638
1859-60 ...	£ 21,732,681

Sir, I have been pressed to urge upon the Home Government the propriety of giving an Imperial guarantee for the Indian Debt as a

means of reducing our Indian expenditure. This is a request which I could not consistently advise you to make—it is one which I could not advise the Home Government to accede to. With nations, as with individuals, the measure of the credit is not a question of arithmetical calculation. It lies far deeper. It is a measure of their prudence of their good management—it acts as a check upon improvidence, and often induces to great reforms, which but for necessity would be neglected. I have said that England has never exacted tribute from India as a dependency. I think she ought not to be asked to pledge the credit of her Exchequer for us; for if for us, why not for Canada, which has a six per cent, debt?—why not Australia, which has a six per cent. debt?—why not the Cape—why not for all our Colonies. I sincerely believe that we shall best consult the real interests of India, that we shall be more likely to recover a good position and to maintain it, if we keep our finances altogether separate from those of the Home Government.

Sir, I have been asked, as I said before, what result we expect from our increased taxes, and from our reduced expenditure. We hope, in the course of time, to make both ends meet; our aim of course is to produce an equillibrium; but I must remind you that some time, the greater part of a year must elapse before our taxes can become fruitful, and before our reductions of expenditure and reformed systems can begin to tell. In the mean time, however, our balances in the Exchequer are large; larger than they have been since 1853; and larger by upwards of six millions than on the 30th of April last year. In India and at Home I expect our balances on the 30th April next will be about £19,600,000 against £13,398,000 last year, and therefore, even though our new taxes should be dilatory in coming in, and the reductions of expenditure some time before they are felt, I trust we may be able to go on without any further resort to borrowing, at least for a time; and I hope that, if we continue to be blessed with peace when these measures are carried into full effect, we may be saved the necessity of having resort so constantly to the money market, as unfortunately in the past has been the case.

Sir, I offer you a deep apology for the unusual time that I have occupied your attention; but the subjects were so vast, the topics so important, the interests at stake so grave, the measures proposed so novel in this Council, that I should not have done my duty if I had not used all the means within my reach, inadequate as they are, to recommend them to you and the public, whom they chiefly concern. Sir, what we have proposed has been after the gravest consideration—prompted by the best motives and the most earnest desire to promote the lasting welfare of India and of our native fellow-subjects; and having done this in the conscientious performance of our public duty, in the high and responsible offices we hold, it will rest with us, should we receive your support, to exert all our executive ability and power to give effect to them. We shall be patient to hear and to weigh objections to detail; we shall be anxious to give our best consideration to all suggestions for improvement of our plans; but, in the main, we think that the crisis is so serious, that the time for argument and discussion has passed, and that the time for energetic action has come. Sir, we wish scrupulously to regard the strict rights of every man. Whatever we do, shall be based upon the strictest equality between class and class, whe-

ther Europeans or Natives, whether official or non-official; and trusting to a firm administration upon these principles, relying upon the support of all lovers of good order, we hope through your assistance, and by the aid of a public in whom we have now shown unreserved confidence, that we may be the humble instruments, in the hands of a higher power, to restore to India that security for future prosperity and happiness, which she can hardly be said now to enjoy.

MR. WILSON concluded by moving that the Standing Orders be suspended to enable him to introduce a Bill "to amend Act VII of 1859 (to alter the duties of Customs on goods imported or exported by sea").

SIR BARTLE FRERE seconded the Motion.

MR. HARINGTON said, the object which he had in view in rising to address the Council at this time, was not to enter into any discussion of the general merits and principles of the measures which had been proposed for their adoption by the Right Honorable Gentleman opposite, in a speech which would he was sure long be remembered with pleasure and admiration by all who had had the opportunity of hearing it; but in order that he might take the earliest occasion of expressing to the Right Honorable Gentleman his acknowledgments for the manner in which in that speech he had done him the favor of speaking of himself and of his conduct in connection with the Bill brought in by him last year for licensing trades and professions, which it was proposed should now become absorbed in the larger and more comprehensive measures, of which the Right Honorable Gentleman had given them an outline, and the introduction of which, at the present time, was considered by the Government to be imperatively necessary for the reduction of the alarming deficit, the amount of which, upon a comparison of the income of the country with its expenditure, had been mentioned to them by the Right Honorable Gentleman. He also wished, with the permission of the Council, to say a few words in respect to the Bill to which he had just alluded.

It had been well and truly observed by that eminent statesman, Sir Robert Peel, to whom the Right Honorable Gentleman had referred, at the time that he proposed an income tax for England, similar in its general features to the tax which, under the same name, the Right Honorable Gentleman now proposed to introduce into this country, that in great financial difficulties the first step towards improvement was to look those difficulties boldly in the face. This, he said, was true of individuals; it was true also of nations and he added, "so long as you consent to conceal from yourselves the real extent of the difficulties with which you have to contend, there can be no hope of improvement, no hope of recovery." The statement which had just been made to them by the Right Honorable Gentleman opposite, showed that he was fully sensible of this truth, which was probably uttered in his hearing in the House of Commons. Nay more, that statement showed that the Right Honorable Gentleman had not only had the courage boldly to confront the Financial difficulties which pressed upon the Government of India at the present time—great though those difficulties were—and fearlessly to expose them to public view, but that he was fertile in resources to meet and overcome them. As he had already intimated, it was not his intention on this occasion to enter into a discussion of the measures, to the introduction of which the Right Honorable Gentleman required Legislative sanction, and, as regarded those measures, he should content himself for the present with saying, that he hoped to be able to give them a general and hearty support. He trusted that it was unnecessary for him to assure the Right Honorable Gentleman that, if in maturing the Bills which he proposed to bring in, he (Mr. Harington) could be of any use to him, whatever aid it was in his power to afford would be most cheerfully rendered. He would not pretend that in all that had been said and pro-

posed by the Right Honorable Gentleman, he was entirely in accord with him, or that he might not differ from him upon some points; but, looking to the difficulties in carrying on the government of this vast country, to which the events of the last three years had given rise—recollecting that the Right Honorable Gentleman had been selected by Her Majesty and deputed to this country for the express purpose of aiding, with his large experience and great abilities, in restoring the finances of India to a healthy condition—informed as they had been by the Right Honorable Gentleman to-day, that the measures which in his judgment were essentially necessary to the attainment of the object which he had come out to India to accomplish, had the full concurrence of His Excellency the Viceroy and Governor-General of India and of the Honorable and gallant General and of the Honorable Member of Council on his left—and understanding that the opinions entertained by the Right Honorable Gentleman on one very important point, upon which he had dwelt at some length, and in respect of which it might be supposed from what had taken place on former occasions, that his (Mr. Harington's) views were not altogether in harmony with the views of the Right Honorable Gentleman, were acquiesced in by the Honorable and learned Chief Justice, by the Honorable and learned Judge opposite (Sir C. Jackson), by the Honorable Member for Bengal, and by many other able, high minded and honorable men—he felt he might very well and properly surrender his own opinions where they differed from those of the Right Honorable Gentleman, and that, when such was the case, he should not be doing any great violence to his conscience if he abstained, not only from any attempt to enforce his own views in opposition to those of the Right Honorable Gentleman, but even from any open or public expression of them. At this juncture it seemed to him that divided councils or anything which, in word or in deed, was calculated to embarrass the Government, should be avoided as much as possible—what

Mr. Harington

was required of them was "a long pull, a strong pull, and a pull all together."

He would pass on to the Bill brought in by him for licensing trades and professions, not however for the purpose of defending the principles upon which that Bill was based, for he felt that, at the present time, this would answer no good or useful purpose, and he was content that the Bill and all connected with it should become matter of history.

The greater part of his official career in India, which commenced upwards of thirty-five years ago, had been spent in the discharge of duties which took him altogether out of the particular line in which the Right Honorable Gentleman opposite had passed a long life. With what success was best evidenced by his presence there to-day. He (Mr. Harington) possessed no special qualifications or experience for framing and bringing in the Bill in question, and he might be considered by many to have been guilty of an act of presumption, if not something worse, in the attempt which he had made by means of that Bill to assist the Government out of its difficulties. But it so happened that, from accidental circumstances, and most certainly without any effort on his part, he suddenly and very unexpectedly found himself placed in a position which rendered it incumbent upon him to do something more than merely discharge the ordinary routine duties of the important office to which the Right Honorable the Governor-General did him the high honor to nominate him. Amongst the measures which at once came before him, were schemes from various quarters for improving the revenues of the country by means of fresh taxation; one recommended a duty upon successions—another, a duty upon native marriages—another, a duty upon tobacco—another, a house-tax—another, an income-tax—another, a duty by means of licenses upon trades and professions, and so on. Having carefully examined and considered all these various schemes, the conclusion at which he arrived was that the measure proposed by him was the most

practicable and open to the fewest objections, and he introduced it accordingly. He had no cause to be dissatisfied with the reception which the Bill, as it was originally framed, met with here and at home. No doubt, it was abused by some and opposed by others; but no new tax, he believed, was ever yet proposed which did not encounter similar opposition or meet with similar abuse. Before the second reading, acting under the advice of gentlemen to whose opinions he had been in the habit of attaching much weight, he was induced to propose certain alterations in the Bill, which, he believed, led to the violent assaults which were then made upon it, and to much of its subsequent unpopularity. His own judgment never assented to those alterations. They were adopted in deference to the opinions of others: but the friends with whom he was in communication at the time, would, he was sure, bear him out in the statement that he not only disliked them, but that he was quite prepared for their being opposed by the local authorities and by the public at large, and that he fully expected, and certainly hoped, that when the Bill got into Committee, backed by public opinion, he should find himself in a position which would enable him to get rid of the Sections in which these obnoxious alterations were contained, and to restore the Bill very much to the form in which it was introduced by him. He bore in mind that if this were done it would not be necessary to re-publish the Bill, but that it might at once pass into law; whereas, if in Committee more stringent provisions were added to the Bill, it must be re-published, and its passing would thus be deferred for an indefinite period. This was one of his reasons for assenting to the alterations in question. Shortly after this, the probability of the appointment of the Right Honorable Gentleman to be a Member of the Council of the Governor-General of India, became known to the Govenment of this country, and from the time that appointment was made, he (Mr. Harington) felt that it must rest with the Right Honorable Gentleman, in communication with the Right Honorable the Governor-General and the other Members of the Government, to determine upon the course which it would be proper to pursue in respect to the Bill brought in by him' and that from thenceforth the matter was taken out of his hands. The Right Honorable Gentleman had alluded to a statement which had been current for sometime, he believed both here and at home, in connection with his appointment to India. That statement was to the effect that the object of the Government in bringing in the Bill for licensing trades and professions at the particular time chosen for its introduction, was to forestall the Right Honorable Gentleman, and, to some extent, to do by anticipation what the Right Honorable Gentleman's mission to India was intended to accomplish. This proceeding was considered unfair towards the Right Honorable Gentleman, and as calculated seriously to embarrass him; and the Government was condemned in consequence. He begged to thank the Right Honorable Gentleman for having relieved them from this charge. The Right Honorable Gentleman had shown that, while the Bill for licensing trades and professions was introduced upon the 13th August last, his own appointment to India was not proposed until a later period.

It was hardly necessary for him to say that he entirely acquiesced in the course which it was intended to pursue in respect to the Bill brought in by him. In introducing that Bill he proposed to himself no personal triumph; he sought no personal aggrandizement; he had no personal ambitions to gratify. He simply wished to do what he considered best for the public interests. He could not regret having brought in the Bill, although it was not destined to reach maturity. He believed that the Bill had done some good. That such had been the case had indeed been obligingly admitted by the Right Honorable Gentleman, though the good effects of the Bill, even in the direction in which they had shown themselves, had, probably, from a generous feeling of kindness and consideration towards himself, been greatly over-stated by the Right Honorable Gentleman. He

further believed that the Bill had done little, if any, harm, except it might be to its author. But while he most heartily rejoiced if the Bill had really been of any service to the Right Honorable Gentleman, either in eliciting information, in drawing out public opinion, in acting as a safety-valve by which much ill humour and angry feeling had made their escape, in preparing the minds of the community at large for what, from unavoidable necessity, was about to come upon them, or in any other way, he felt that no more credit or praise was due to him than to the pioneers of an army who cleared and prepared the road along which that army marched to victory. The credit of the pioneer might be his, but certainly nothing more. For the rest he would say, "*palmam qui meruit ferat*," and he could truly add that no one would rejoice more heartily than himself in the success which he sincerely hoped awaited the measures of the Right Honorable Gentleman, or would more gladly contribute in any way that might be in his power to promote their success.

He was quite ashamed to intrude upon the Council the insignificant matters relating to himself to which he had been referring, after the gigantic topics which had been touched upon by the Right Honorable Gentleman; but, though at the risk of being thought egotistical, he had deemed it right to say thus much to-day. He hoped that he had now brushed away, as it were, all matters of a personal nature in so far as he was concerned, and his earnest desire was that, when they entered upon the discussion of the large and important measures which the Right Honorable Gentleman had, with so much ability and fulness, propounded to them, nothing would occur to prevent them from considering those measures on their merits alone and entirely upon public grounds.

The Motion for the suspension of the Standing Orders was put and carried.

MR. WILSON then moved that the Bill be read a first time.

The Bill was read a first time.

Mr. Harington

CARNATIC ESTATE AMENDMENT ACT (XVI OF 1859).

THE VICE-PRESIDENT postponed the Motion (which stood in the Orders of the Day of a Resolution on the subject of Act XVI of 1859,) and of the judgments of the learned Judges of the Supreme Court at Madras in the case of Gunsham Doss.

NOTICE OF MOTION.

MR. WILSON gave notice that, either on Saturday next, or at latest, on the Saturday following, he would introduce a Bill, the object of which would be to extend to the whole of India a system of well secured convertible paper note currency.

PUBLIC CONVEYANCES.

MR. LEGEYT moved that a communication received by him from the Calcutta Trades Association be laid upon the table, and referred to the Select Committee on the Bill "for regulating public conveyances in the towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

NOTICES OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday the 25th Instant, move for a Committee of the whole Council on the Bill "for regulating the establishment and management of Electric Telegraphs in India."

Also that he would on the same day move for a Committee of the whole Council on the Bill "to empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

The Council adjourned.

Saturday, February 25, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. B. Harington, Esq.,
Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon. J. Wilson,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

EMIGRATION.

THE CLERK reported to the Council that he had received a further communication from the Home Department, forwarding a Despatch from the the Secretary of State for India, concerning emigration to the Island of Saint Kitts.

THE VICE-PRESIDENT moved that the above communication be printed.

Agreed to.

CARNATIC ESTATE.

THE VICE-PRESIDENT presented the Report of the Select Committee on the papers relating to certain judgments delivered by the Judges of the Supreme Court at Madras in the matter of an application on behalf of Gunsham Doss, a claimant against the Estate of the late Nabob of the Carnatic, for the purpose of preparing a statement of the circumstances under which Act XVI of 1859 was passed, and of reporting generally on the subject.

STAMP DUTIES.

MR. SCONCE presented the Report of the Select Committee on the Bill "to consolidate and amend the law relating to Stamp Duties."

CUSTOMS DUTIES.

MR. WILSON moved the second reading of the Bill "to amend Act VII of 1859 (to alter the duties of Customs on goods imported or exported by Sea)."

MR. SCONCE said, he did not by any means intend to make any opposition to the second reading of the Bill. On the contrary, he was prepared, while accepting the principle on which the Bill was drawn, to adopt the wise and judicious exposition of motives and objects for modifying the laws relating to Customs Duties as made to the Council this day week, by the Right Honorable Gentleman. Possibly as to details there were one or two points which he thought required some further consideration, as for example the duty on tobacco. In other respects he had no remarks to make with reference to the subject matter of the project. He might find some cause of regret that the Right Honorable Gentleman felt himself unable, in a greater degree, to apply to a portion of our exported products the principle which was applied so successfully to opium and saltpetre; namely, to get as much as we could out of foreign countries in aid of our internal expenditure. It was true that here, as in all national and international relations, we were met with conflicting principles. We were certainly bound to abstain from injuring ourselves, and it might amount to uncompensated injury if we placed so high a duty on the export of indigo, jute, hemp, or hides, as would drive them out of the foreign market. After all, it was but a question of degree, and a moderate duty might be uninjurious, and at the same time a material source of revenue. While he was not prepared to say that the Right Honorable Gentleman had not used a wise discretion in the arrangements proposed in the Bill now before the Council, nevertheless the opportunity should not be lost sight of to benefit ourselves at the expense of foreign nations. In the sense in which he now spoke, England was a foreign nation. Our first duty was to India, and to replenish the Exchequer of India by whatever means might be least onerous to ourselves. But, besides, whatever obligation might lie in the general consideration of commercial and financial relations, it appeared to him we had special cause to attempt to lay a tribute on foreigners, especially England. We heard the other day from the Right Honor-

able Gentleman, and certainly we all assented to the remark, that England exacted nothing in the shape of political tribute from India; the public income of England was assuredly in no way assisted by remittances from India. But this admission did not state the whole matter arising from the connection of the two countries, and in fact India did yield a large tribute to the general wealth and resources of England—contributing a very large proportion of her annual exportations, for which not only no adequate return but no return at all was made. Perhaps this fact was not so prominently noticed as was desirable for the welfare of this country. All who had studied the external commerce of Bengal knew that, in the normal position of our commercial relations, taking merchandise and treasure together—for, as the Right Honorable Gentleman rightly reminded us, there was no difference between a trade in treasure and a trade in goods—Bengal sent out annually a value of three or four millions in excess of her imports. He might easily illustrate this by reference to the returns from the Custom House of Bengal, but he would ask the attention of the Council to the more complete return of the commerce of all India as communicated to the Council by the Right Honorable Gentleman on Saturday last, which exhibited the following results of the comparative trade between the two countries: for the five years ending in 1839, we exported merchandise and treasure in excess to the amount of four millions; for the five years ending in 1844, £3,800,000; for the five years ending in 1849, £4,700,000; but in the five years ending in 1854, a remarkable change took place, the excess on the same side being only £300,000; while more remarkable still, in the five years ending in 1859, we did not send in excess, but received over and above our exports, imports to the amount of £3,500,000. He would not at this time attempt to explain wholly the cause of this recent change in our commercial relations. One prominent cause might be that, in late years, instead of England receiving supplies from India, supplies had been obtained there. By-and-bye when things came round, he apprehended that the trade-balance would also fall back to its former condition, and that, whether the total imports and exports were large or small, there would still be an excess to be remitted to England. He apprehended that this remittance must have some effect on the commercial condition of the country. It seemed to him that the first direct effect of this would be to deprive us of so much treasure, and thus enhance the value of money; next to depreciate the exchange by the demand for bills, and reduce it below par, giving, as it might be, only 1*s.* 10*d.* for our rupee; a third effect, and a very common one, would be to lower prices by carrying to and forcing upon foreign markets a larger quantity of our products than those markets would have taken off while commerce was in a state of equilibrium. He did not presume at that time to consider that question, but mentioned it simply in this sense, that foreign countries, England possibly, might justly be called upon to contribute towards our revenue.

There was another matter to which, with the permission of the Council, he would allude. Speaking, as he desired to be understood, with only an imperfect acquaintance with the financial affairs of this country, and only with very limited and indirect means of becoming acquainted with those affairs, he would desire to express his thorough conviction of the magnitude of the present public embarrassments. However apparent the paradox, it was because of the sudden and unprecedented magnitude of the public charges that he was most hopefull of the pressure being effectually and rapidly relieved. The Right Honorable Gentleman had informed the Council that the expected deficit chargeable both in India and in England, upon the revenues of India for the year about to close, was £9,290,000, or nine crores and twenty-nine lakhs of Rupees; while for the coming year it was not safe at this time to calculate on a lower deficit (exclusive of the broad measures of relief lately announced to the Council)

than six and a half crores. But he should prefer to consider our embarrassments from a closer point of view. A mere deficit was not in itself an independent basis of financial investigation. It was but the result of two elements, that is, the difference resulting by a comparison of the public charges with the public income; and it seemed to him that the Council would be better enabled to appreciate the gravity of the present financial crisis by directing their attention especially to the absolute amount of our charges and our receipts.

He very deeply felt that, in the remarks which he offered to the Council, he groped in the dark; and, if there was simplicity in the confession, it was not the less true; he desired to be put in possession of further knowledge than his opportunities permitted him to acquire. What then was the charge upon the revenues of India for the year 1859-60? This charge, it would be remembered, broke up into two sections, an Indian charge and an English charge. Now, on Saturday last, the Right Honorable Gentleman showed them that the total sum chargeable in the local accounts was estimated at £41,770 000, or forty-one crores and seventy-seven lakhs of Rupees; and that the total sum chargeable in the accounts at home would amount to five millions and a half. The result would give a total charge of £47,277,000. This charge of £47,277,000 constituted then the total charge on the Indian revenue during the present year. In looking back to the year 1856-57, he found, from a return printed in 1858, by order of the House of Commons, that the total sum chargeable on the revenues of India for that year did not exceed £30,000,000. The result appeared, therefore, from those two statements, that on the third year from 1857 our charge had risen from thirty to forty-seven millions; that was a charge of seventeen millions over 1857, an increase of fifty six per cent. He should therefore consider, looking at the magnitude of the increase, that some special information should be afforded to the Council as to the items which constituted the total charge, that the Council might have the means of judging whether so remarkable an addition to the public burdens should become a permanent charge on the revenues. But, moreover, the returns of the House of Commons, from which he had taken the charge for 1856-57, exhibited a revenue, the total of which did not exceed £30,000,000. It now appeared that the revenue for the present year amounted to £37,700,000. So that instead of a revenue of £30,000,000 as three years ago, we had now seven millions more; but that was not enough, and it would appear a further supply of £10,000,000 must now be produced. It seemed to him most important to bring these matters before the Council. The very fact that the revenue had improved to the amount of seven to eight millions in three years, should make us careful to consider whether it was now necessary to increase the permanent revenue of the country, not only up to the sum now received, but beyond it to any indefinite amount. He had not hesitated to speak upon that point, feeling as he did on the matter. He, however, might have brought forward a difficulty which did not exist, and arose only in his own misconception.

There was also one other point on which he would make a few remarks. The Right Honorable Gentleman referred to a Financial Despatch of this Government, which was published in the course of October last, and signified to the Council that some errors existed for which the Executive Council were not responsible. It might be remembered the Despatch itself embodied two accounts, one an abstract account of revenue and charges, and the other an account of cash-balances. It was to the latter that he (Mr. Sconce) wished now to call attention. The return was headed by two items—an estimated revenue to the amount of three crores and seventy-five lakhs was on one side of the account, and a general charge of about forty crores on the other. But there were also one or two other items on which it seemed to him desirable that they should have some special information. He thought that this account, and

accounts of a similar kind, might have been drawn on some sounder principle than seemed to him to have been followed. Be that as it might, he found one charge put down as payments to Railway Companies amounting to six crores and twenty lakhs. He did not understand, from the exposition made by the Right Honorable Gentleman, if any provision was being made for the payment of this. He could Judge, from the aggregate charge exhibited in the two estimates, that the forty-one millions estimated by the Right Honorable Gentleman did not embrace the six millions supposed to be payable to the Railway Companies. It was not enough for him to know that the Railway Companies had at one time or another paid into the coffers of the State money on which these payments were made. If Railway payments were made to Government, and Government spent these payments for its own purposes, when the Railway Companies demanded repayment of the deposit, undoubtedly Government must be prepared to meet the demand from other sources. He confessed he read with some astonishment, in a return made to the House of Commons, that it was considered unnecessary to include a provision for the payment of these deposits, because new payments would correspond with the demands anticipated. It was clear that, if the charge was made on the credit of a past deposit, Government would have to take it up in the disbursements of the present year. It seemed to him, and he only spoke from a very limited knowledge, that to whatever amount the State was indebted to Railway Companies, the payment of that debt should be charged in the public accounts. And for himself, he should be glad to see an account of the total sums paid in year by year, and a corresponding exhibition of the sums annually re-paid. Railway works were too extensive, and involved too enormous an outlay, to admit of the public overlooking the necessary returns of payments and disbursements.

There was also another item of a similar character in the cash statement for September, to which he would allude, namely, the fifty lakhs payable in discharge of the debts of the Nabob of the Carnatic. He might be mistaken, but, he thought that, if payable at all, it was strictly a charge for the present year.

He had thought it incumbent to make these remarks which he had ventured on, but not with any feeling of opposition to the second reading of the Bill, as he thoroughly admired the principle on which the Bill was framed.

MR. WILSON said, he was afraid that the concluding remarks of his Honorable friend would hardly bear out the criticisms with which he had preceded them. He (Mr. Wilson) was not sure that he quite understood his Honorable friend in all the observations which he had made, because he found that one part of his remarks was somewhat contradictory to another. His Honorable friend complained, because we did not attempt to throw the burden of taxation on foreign countries. He (Mr. Wilson) thought that the time had gone by for such ideas being entertained, and it appeared strange to him that in this enlightened age such an opinion should have been mooted. His Honorable friend must know that our products were exposed to competition in foreign markets, and the mere effect of an export duty being levied upon them would prevent their encountering so severe a test, subject as they would be to the rivalry and competition of the whole world. Whatever duty we imposed upon them, it was obvious that that impost must be an additional charge on the goods, and probably be the means of excluding them from the market altogether. He could assure his Honorable friend that, if any method could be devised for taxing foreign countries, that would be a discovery so novel that any politician might justly be proud of it. As he said before, it was an unique fact that this country had almost a monopoly in the opium trade with China. But the revenue derived from that article could not be considered as a tax on a foreign country, but simply in the shape of a profit on the product of this country.

His Honorable friend went on to say that he was afraid the affairs of India in relation to England were not in a wholesome condition, because he found that the balance of trade was in favor of England, and also suggested that taxing the exports and increasing the imports would be the means of removing impediments. He (Mr. Wilson) thought that these two observations were not in accordance with each other. His Honorable friend went on to say that, although we did not pay a political tribute to England, yet we paid something equivalent to it, because the balance of trade was in favor of England. Now, his Honorable friend must bear in mind that they must not take the direct trade between two countries as conclusive evidence of the balance of trade between those countries. They must also include with the direct the indirect trade. The shipments hence of opium to China were paid for again by the shipments of tea to England. The goods sent from this country to Australia were met again by Bills on England. To take two isolated countries would only give an inadequate and isolated notion of the trade between them. He would assure his Honorable friend that he might rest well satisfied that there could never be any lasting balance between two countries. If India did not get paid for her products at rates which remunerated her, India would not long continue a losing trade, but the best guarantee against such a state of things was the satisfactory, rapid, and grand progress which her commerce had made for some years past.

His Honorable friend had alluded to the statements of income and expenditure to which he (Mr. Wilson) had referred on Saturday last. His Honorable friend had stated that he required further and fuller information on the subject. He (Mr. Wilson) regretted his Honorable friend had not given specific notice of his question, as he (Mr. Wilson) would have been only too glad to have come prepared with full and detailed statements of the past and estimated future income and expenditure of India. His Honorable friend said that the total charge of the Indian Empire for this year might be estimated at forty-seven millions. In that he (Mr. Wilson) believed his Honorable friend was correct, as well as in the statement of the revenue for 1857. There was no question but that the increase was large. His Honorable friend must be aware of the increase of eight millions in the military expenditure for this year, and he must also bear in mind that in 1857-58 much land revenue was not collected.

But his Honorable friend went on to advert to the account rendered and published in September last. Here he might say his Honorable friend was confounding two separate and distinct things. There were two distinct accounts, the one of income and expenditure, which had nothing to do with the other, which was an account of cash balances of different years. His Honorable friend complained that no notice had been taken of the six millions issued for Railway purposes. That ought not to have been put down as expenditure, and it would have been perfectly erroneous so to have placed it. His Honorable friend was right in saying that it was a charge on the present year, but it was merely a cash disbursement to the Railway Company received during the year. His Honorable friend had said that he would be glad to see an account showing the amount received from and disbursed to the Railway Companies. That was an account which he (Mr. Wilson) had it in his power to furnish, and which he would be most happy to do whenever he wished. There was never a large balance in the hands of Government; about twenty-two millions had been paid in, nearly the whole of which had been expended on Railway purposes.

He (Mr. Wilson) was not aware that there was any other point to which his Honorable friend had adverted, and would, in moving the second reading of the Bill, take the opportunity of stating that, when the Bill came under a Committee of the whole Council next Saturday, it was his intention to propose certain amendments, which would be printed and circulated to the Members in the course of the week.

The Motion was then put and carried, and the Bill read a second time.

REGISTRATION OF ASSURANCES.

MR. FORBES moved the second reading of the Bill "to provide for the Registration of Assurances."

MR. SCONCE said, he had no intention of opposing the second reading of this Bill. He only wished to state that, with respect to the particulars of many of the Sections, he did not hold himself bound to what might be called the principles on which the Bill, as it now stood, was framed. He knew the anxiety of his Honorable friend opposite (Mr. Forbes), and the general opinion that it was necessary to legislate on the subject, and when the Bill came under the consideration of the Select Committee, possibly the best opportunity would be found by discussing the various propositions which the detail of the Bill involved. Possibly, too, the question might arise, whether it would not be expedient to consolidate this Bill with that in charge of the Honorable and learned Judge on his right (Sir Charles Jackson), for the prevention of fraudulent transfers of property. He would only shortly state one or two points on which it appeared to him, the Bill, as it now stood, was objectionable. He would first refer to Section IX. He was not prepared to adopt the principle that all transfers of moveable property above fifty Rupees should necessarily be registered. To compel the registration of all such loans seemed to him to throw objectionable impediments in the way of commercial operations. Again, the language of this Section seemed indistinct, for bonds would come under this Section, and he thought that bonds could hardly be called transfers of moveable property.

Another matter to which he wished to allude was the mode of registration, and the effect of registration. Deeds were by Section XIV to be registered according as the Registrar might or might not personally know the parties who came before him. If he did not personally know the parties, he would require the attendance of witnesses whom he knew to prove the identity of the parties. It was quite a wrong course to depend on the mere knowledge of a Registrar. A Registrar here to-day would be gone to-morrow; and whatever importance was attached to his knowledge, would be lost.

It would be again found in the 25th Section of the Bill, by which the authenticity of a Deed was proposed to be secured, that the signature of the Registrar should be evidence that the parties to the instrument and the persons who testified to the identity of such parties actually appeared before such Registrar and registered such instrument or testified to such identity. He did not think a dead signature could be judicially received as evidence of the actual appearance of any of the parties. It could not, in the course of judicial proceedings, be accepted without other evidence. By this Bill mere registration gave absolute force to any transaction. It bound all parties at all times. This was done without any enquiry or without any provision for enquiry, and involved no giving of notice, so that, whatever might be the objection taken, the mere fact of the registration having been effected carried with it the property registered and established the obligation expressed in a bond.

In the 37th Section all claims were to be enforced by a simple petition. The mere presentation of a petition involved no subsequent enquiry. There was a reserve that, if the Court should think the instrument was not conclusive to the effect to be given thereto, or that judicial enquiry to warrant execution was otherwise necessary, the party making the application should be referred to a Civil action. But one Judge might think one way, a second another way. The provision was too indefinite. The Section itself gave no assurance that justice would be done.

Further, it would be found in Section XXXVIII, that no party to a registered instrument, enforced as

required by the Act, should be allowed to dispute the Act ascribed to such party in such instrument, or the obligation attaching to him thereunder. Thus no one was to be allowed to charge any party with fabrication or falsehood in the transaction after registration. The mere fact of a party's name being there was conclusive. No one whose property was filched from him by false personation could assert that plea, because the deed was registered.

These were some of the grounds of his objection. He might mention others, partly technical and partly material, but he would content himself at present with saying that the above considerations induced him to assent to the second reading with great qualifications as to several of the provisions of the Bill.

THE VICE-PRESIDENT agreed with the Honorable Member who spoke last, that there were many serious objections in the Bill as it now stood. He would follow the example of the Honorable Member by not opposing the second reading of the Bill, but reserving to himself the right of urging his objections hereafter. He thought it impossible that the Bill could pass in its present state. It was a Bill to provide for the Registration of Assurances. It appeared to him that a Bill of that kind ought to be general in its operation; but one of the Sections expressly provided that the Act should not be in force within the limits of the jurisdiction of the Courts established by Royal Charter. Now, if the Bill was a good Bill for the Mofussil, it ought to be a good Bill for the limits of the Supreme Courts. If it threw such difficulties in the way of trade or commerce, or of carrying on the ordinary transactions of life as to render it necessary to exclude it from the limits of the Supreme Court, it would be scarcely applicable to the Mofussil. Section IX provided that—

"No transfer of immoveable property, and no transfer of moveable property exceeding in value fifty Rupees, any of which instruments may have been executed after the passing of this Act, shall be valid, unless the same be registered within the period of time prescribed by this Act, provided always that the transfer shall operate from the time of its execution, and not from the time of its registration, and that if such deed be not registered within the time prescribed, it shall be void and of no effect from the time of its execution."

Then there was an interpretation Clause, which declared that—

"The word 'transfer' should import every kind of instrument by which any property or interest therein is alienated, conveyed, assigned, or transferred, or given absolutely or partially, or conditionally, or on the happening of any future event or contingency, or on the failure to do any act or pay any money, or by way of mortgage or pledge."

It seemed from this, that the word "transfer" would include all contracts for the payment of money. The exception contained in Section XXXIX, which provided that nothing in the Act should be held to extend to Bills of Exchange, or to any other negotiable instruments or mercantile documents, or to written agreements known as pottahs and kuboolyuts between landlords and their tenants, or to contracts between ryots and others for the cultivation or delivery of indigo plant—proved that, with these exceptions, all contracts for the payment of money exceeding fifty Rupees were intended to be included. They would therefore have to be registered within thirty days before the Registrar by all the parties thereto. No person could register a document, unless all the parties attended before the Registrar. If the Registrar did not personally know any one of the parties, the party must get some one to accompany him for the purpose of identifying him to the Registrar. The parties might be put to great difficulty in finding such a person, and all this was required to be done for the registration of a document for the payment of the small sum of fifty-one Rupees. But that was not all. Even after all these requisitions had been complied with, the Registrar could not register, unless the instrument required to be registered should have been received by the Registrar through a vakeel. Section XVIII provided—

"Where it may be inconvenient for any parties to an instrument, the registration of which

is required, or the heirs, representatives, or assigns of such parties, to appear before a Deputy Registrar personally for presentation of such instrument for registration, such instrument may be presented for registration to the District Registrar, by means of one of the vakeels of the Civil Court, duly constituted for that purpose by the said parties, their heirs, representatives, or assigns. But no instrument shall be received by the District Registrar from the parties themselves, their heirs, representatives, or assigns, without the intervention of a vakeel."

So that, if a poor person wished to register, he would be compelled, not only to find a person who was personally known to the Registrar and could identify him, but he must employ a vakeel or lawyer. This would prove a great hardship, and would impose upon every one who entered into a contract for the payment of any sum above fifty Rupees the obligation to employ a lawyer.

Again, no provision was made for the case of native females (purdah ladies), who could not go to the Registrar.

He thanked the Honorable Member for Bengal for alluding to Section XXV, and agreed with the Honorable Member in the remarks he had made on it as to the inexpediency of making the signature of the Registrar to the entry in the Register Book evidence of the identity of the parties.

By Section XXXIII again an appeal would lie from the Deputy Registrar to the District Registrar, whose decision would be final. But the appeal must be presented within thirty days, and Section XXXVII went on to show how claims founded on registered instruments were to be enforced. It provided that—

"All claims founded on registered instruments not affected by other instruments subsequently registered, or by decrees of Court or public sales, shall be enforced on application to the Court having jurisdiction in the matter of such instruments on a miscellaneous petition. But if it be found that the instrument is not conclusive as to the effect to be given thereto, or that judicial enquiry to warrant the enforcing the same is otherwise necessary, the party making the application shall be referred to a civil action."

Then came Section XXXVIII, which provided that—

"No party to a registered instrument, sought as above to be enforced, and no heir, representative, or assign of such party, shall be allowed to dispute the Act ascribed to such party in such instrument, or the obligation attaching to him thereunder."

Certainly there was the permission to appeal to a Civil Court, but what use would that be in the case of false personation. If a man were to personate him (the Vice-President), and bound him over to pay eight or nine lakhs, was he not to be allowed to dispute it, because the transaction was registered, and because it was signed by the Registrar? This was taking the jurisdiction entirely out of the hands of the Appellate Courts, and placing it in the hands of the Registrar. It simply amounted to this: that a man's name once attached to the register, and countersigned by the Registrar, he was for ever debarred from disputing it, even though it might have been forged. Frauds might easily be committed, and yet no one was to be at liberty to dispute the contract after it had been registered, though it might have been obtained by fraud. Suppose a man intending to bind himself for five hundred Rupees, should, by fraud, be induced to sign a contract for five thousand Rupees, believing it to be one for five hundred Rupees, he could not dispute the contract after it was registered.

He felt himself to be under great obligation to the Honorable Member for Madras for bringing in this Bill. He thought that all transfers of immoveable property, whether into Presidency towns or elsewhere, ought to be registered; but he reserved to himself the right of objecting to the registry of all contracts. It was desirable to throw every impediment in the way of the production of forged documents. But he thought that this might be done by requiring all actions on unregistered documents to be brought within a very short period after the contract was broken, and by rendering it compulsory to register certain classes of documents, and those not to be performed, say within a year or six months. If the party did not choose to register the documents, the time for bringing an action might be limited to three months. This would serve the same purpose as taking it to the

Registrar. Under the present Bill, however, it might arise that a bond above fifty Rupees was to become due in a week, or a fortnight, yet the party could not sue till the document had been taken to the Registrar and filed. Thirty days were allowed for the purpose, and the contract might be broken before the expiration of the period limited for registration. He (the Vice-President) pointed out these objections merely with a view to their being taken into consideration; but, as he had before stated; he had no intention of opposing the second reading of the Bill.

SIR CHARLES JACKSON said, that, in assenting to the second reading, he also wished to reserve to himself the right of objecting hereafter to some of the provisions of the Bill. He objected to that part of it which required the registration of all transfers of moveable property exceeding in value fifty Rupees. He did so, on the broad ground that it would operate as a check upon trade and seriously interfere with the ordinary transactions of life. He would endeavor in Committee to restrict the operation of the Bill as regards personalty to those prolific sources of fraud and perjury, voluntary deeds, marriage settlements, and wills.

SIR BARTLE FRERE said, he so entirely agreed with the Honorable and learned Vice-President as to the obligations of the Council to the Honorable Member for Madras, and there seemed so little difference of opinion on that point, that he would not say all he intended in illustration of the many evils which this Bill was calculated to obviate. Like the Honorable Gentlemen, however, who had preceded him on this subject, he thought great alterations would be required in the details of the Bill. That did not, however, diminish their obligations to the Honorable Gentleman who had brought it in. There seemed to him (Sir Bartle Frere) to be two ways by which such a subject could be dealt with. One by a tentative measure applicable to some particular class of Courts or to some particular portion of the Empire. Those who had most experience must be aware that, in dealing with the interests of the whole of India in subjects of this magnitude, even the most learned and the most comprehensive mind must feel the difficulty of striking out at once a complete and perfect measure, and there was much to be said therefore in favor of dealing with this subject tentatively. The course to be followed in such case would be that, after trial of a measure already in force in the Lower Provinces, or the Punjab, or any other single division of the Empire, the measure might be extended to other parts of the country. But there were in practice some very considerable objections to this course of proceeding, and, on the whole, he preferred the other mode of dealing with such questions, which was, that the legislation should be general only as to the main features of the Bill, leaving it to the local Governments and to the local Courts to determine upon the details and the precise mode of proceeding. Thus the general law would enact that certain classes of documents should not be recognised in Courts of law, unless they were registered. Who should register them, and in what manner the details of registration should be carried out, might then be left to the local authorities who might be empowered to make rules on the subject. He (Sir Bartle Frere) thought that in many parts of the country there would be found various descriptions of machinery for registration in good practical working order. In many parts of the country where Mahomedans were numerous, or where the Mahomedan rule had been long established, there were Kazees who made most efficient Registrars, and who might be made useful for all practical purposes. Kazees would be found in almost every district in those parts. In other parts, amongst a purely Hindoo population, you would find no Kazees, but there were Officers who held similar appointments under the ancient Hindoo machinery of administration, and who still acted as village and district Registrars to the whole community. Again, he (Sir Bartle Frere) did not see why the Bill should not have effect within the jurisdiction of the Supreme

Courts, the Judges of which, after due consideration with reference to the more complicated system with which they had to deal, might lay down the precise mode for registration with much greater accuracy and fulness of detail than could be obtained, or would be at all convenient in a general measure, which was to be applicable to the whole of India. Whilst rendering, in common with the other Members of the Council, his hearty acknowledgments to the Honorable Member for Madras for the service he had done in bringing in this Bill, he would suggest to that Gentleman to make the provisions of the Bill as general as possible, and to provide for giving power to the Local Governments and to the Supreme Courts, as far as the jurisdiction of those Courts extended, to frame the rules, and provide the machinery for registration.

MR. FORBES remarked that, when he introduced the Bill under discussion, he said he did not propose it as a perfect measure, but in the confident expectation that, if the Council allowed it to pass a second reading and to go before the country, all the imperfections it possessed would be rectified by the suggestions of the general public. He accepted with great gratitude the first instalment of aid and advice which had been given by the Honorable and learned Vice-President, the Honorable Member on his left (Sir Bartle Frere), the Honorable and learned Judge opposite, and the Honorable Member for Bengal. And if he did not now reply to all the objections urged against the details of the Bill, it was not because he could not give explanation which would, to a greater or less extent, remove those objections, but because he thought it better that further discussion should be avoided, and that this Bill should go before the country with the unanimous consent of the Council to its general principle, leaving its details for consideration in Select Committee. He would only further remark that there was an object in introducing this Bill with such stringent provisions as it now no doubt contained. They might easily be modified in Committee; whereas if they were introduced hereafter, it would necessitate the republication of the Bill. He would again thank the Honorable Members for their assistance and advice, to which he need not assure them he would give full attention and consideration when the Bill came before the Council.

The Motion was then put and carried, and the Bill read a second time.

ELECTRIC TELEGRAPHS.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "for regulating the establishment and management of Electric Telegraphs in India"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee, after a verbal amendment in Section XVI, on the Motion of Mr. LeGeyt; and the Council having resumed its sitting, the Bill was reported.

RAILWAY CONTRACTORS AND WORKMEN.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to empower Magistrates to decide certain disputes between Contractors and Workmen engaged in Railway and other works"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I was passed after a verbal amendment.

Section II restricted the jurisdiction of Magistrates to cases in which the amount in dispute did not exceed two hundred Rupees, and in which the claim was not preferred within two months from the date on which the cause of action arose.

SIR BARTLE FRERE said, he would put it to the Honorable Gentleman who had charge of this Bill, whether the limit of time (two months) within which the claim was required to be preferred, reckoning from the date

• *Sir Bartle Frere*

on which the cause of action arose, was not too restrictive? The contractor or other employer often kept a running account with the workmen, and he (Sir Bartle Frere) thought that a limit of two months might be often taken advantage of, for the purpose of preventing such claims being disposed of under this Act. He would propose a limit of six months.

The Motion was carried, and the Section as amended then passed.

The remaining Sections and the Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported.

CARNATIC ESTATE.

The VICE-PRESIDENT said, in rising to move the Resolution (of which he had given notice) on the subject of Act XVI of 1859, and of the judgments of the learned Judges of the Supreme Court at Madras, in the case of Gunsham Doss, he confessed that he did so with considerable reluctance. He felt that he was standing on very delicate ground in asking the Legislative Council to consider the language used by the learned Judges with regard to that Act. But inasmuch as the learned Judges, in delivering their judgments, had used language which was wholly unwarranted by the facts, and which seriously reflected upon the Council, and inasmuch as those remarks had been placed upon the records of Government, he felt it was a duty which they owed to themselves to take such a course as would show to the whole world that they had not been guilty of that unjust and improper legislation which the learned Judges had imputed to them. If it were said that the course he was about to adopt was unusual, he could only say that the language used by the Judges was wholly unprecedented. He would read passages from the judgments of both the learned Judges. An application was made to the Supreme Court at Madras on behalf of Gunsham Doss, one of the claimants against the estate of the late Nabob, to postpone the hearing of his claim, on the ground that he and many other claimants were injuriously affected in the prosecution of their claims by the Act, and that they were about to petition the Secretary of State for India to procure the disallowance of it, and to petition Parliament to repeal it. The learned Judges, in granting the application, thought it was their duty to make the remarks of which he complained on the character and policy of the Act in question, though the learned Chief Justice admitted that he was rather going out of his way in doing so. The Chief Justice said:—

"This consideration leads me out of our ordinary province, which is merely to expound the law as we find it, and not to remark upon its general character and policy. But, called upon as I am under the peculiar circumstances of this case, I am bound to declare my opinion that the legislation complained of is of the grossest *ex post facto* character, and that it violates the first principles of legislation and of justice. '*Nova constitutio futuris formam debet imponere non præteritis.*' This application then, and the proposed petition, are to be supported on public grounds; the case of the petitioner is the case of the community at large; for if such legislation is allowed to stand and to serve as a precedent for future legislation, then the rights of every person throughout British India are in jeopardy, and we no longer live under the shelter of the British Constitution."

Now, he (the Vice-President) could scarcely have imagined that a learned Judge, who must be supposed to be free from all irritati n or excitement, arising from personal or party feeling, could allow himself to declare that the case of a petitioner was the case of the public, and that if the Act was allowed to stand, the rights of every person were in jeopardy, and that we no longer lived under the shelter of the British Constitution. This was language that no British Judge, sitting on the Bench, ought to have used.

Sir Adam Bittleston, in delivering his judgment, said:—

"True it is that the Legislative Council have not assumed to set aside the decision of this Court in the particular case in which it was pronounced, but they have made the very nearest approach to so doing by hurriedly interposing an enactment to nullify that decision as to all the subsequent cases standing on the list for

hearing which would have been governed by it. This is a grave matter on public grounds. It is obviously fatal to any confidence in the administration of justice in any of the Courts of this country, if, as soon as a decision adverse to the wishes or interests of Government is pronounced, the Legislative power may be invoked by the Executive authority (the two being very closely allied and linked together) to interpose and nullify such decision."

If the learned Judge meant to insinuate, by the passage which had just been read, that the Legislative Council was under the influence of the Executive Government, and ready to nullify any decision that might be adverse to the wishes or interests of the Government, he (the Vice-President) would say that such an insinuation was as illiberal as it was unjust and unfounded. The learned Judge should know that every Member of this Assembly was quite as independent and free from the influence of the Executive Government as the learned Judge himself.

He (the Vice-President) would not trouble the Council by going minutely into the case, because the Report of the Select Committee had already been circulated, and had for some days been in the hands of the Honorable Members. But he thought it right to draw the attention of the Council to the circumstances under which the Act in question was passed.

In 1855, on the death of the Nabob, his interest in the revenues of the Carnatic lapsed to the Government. Previously to his death he had been allowed to enjoy one-fifth of the revenues. The Nabob died greatly in debt, and there was every reason to believe that his assets would not be found sufficient to meet his liabilities. The Madras Government proposed to make provision for the members of the Nabob's family, and to pay the just debts of the late Nabob. The East India Company were under no obligation to provide either for the family or servants of the late Nabob, or for the payment of one single farthing of his debts. But it was considered that the creditors might have supposed and been induced to lend money to the Nabob, under the belief that his interest in the revenues would not lapse to Government on his death, but would descend to his successors. In sanctioning the proposal of the Madras Government, the Court of Directors wrote to the following effect in a Despatch in the Political Department, under date the 19th March 1856:—

"We entirely agree in the liberal intentions of the Madras Government in favor of the family. We approve the proposals, that a handsome allowance should be given to the Prince Azeem Jah Bahadoor; that the debts incurred by him as Naib-i-Mooktar should be investigated by a Commission, and such of them as are deemed legitimate paid by Government; that the same course should be pursued respecting the debts of the late Nabob, his personal property being first appropriated towards their liquidation."

Nothing could have been more fair or more liberal than this. But when the Court of Directors consented to pay the debts, they expressly stated as regards those which might have been contracted by Prince Azeem Jah, that it was only such of them as should be deemed legitimate by the Commissioners who might be appointed to investigate them. He (the Vice-President) should have stated that the Court of Directors added—

"We shall only add that, in the adjustment of debts, the utmost care should be used to exclude fictitious or improper claims, that only sums should be admitted which can be proved to have been advanced; that, in regard to articles sold, only the fair market price of the day should be allowed, and that our Standing Order, limiting the interest in such cases to a maximum of six per cent. simple interest, must be scrupulously observed."

Now, there was no hardship in this. The offer of the Government was a voluntary one, and if the creditors, entertaining doubts as to whether they would ever be fully paid, had charged interest at the rate of from twenty to twenty-five per cent. on account of the risk, that was no reason why the Government, when it took upon itself the payment, should be bound to pay any more than was really due to them, together with a fair and reasonable rate of interest, from the time the advances were made. It appred to him that

this was a most liberal offer on the part of the late Court of Directors.

It was at first supposed that the most expedient course would be to issue a Commission to investigate and decide upon the claims, and the Government of Madras proceeded so far as to appoint Commissioners for the purpose; but it was afterwards considered by that Government that the decisions of the Commissioners might not be viewed with satisfaction by the creditors, and that the Supreme Court would form a more satisfactory tribunal. That suggestion was sent up to the Government of India, and was subsequently laid before this Council, and a Bill was prepared and introduced to enable Government to carry out the intention of the Honorable Court of Directors. It was thought right that the creditors should have the means, if they preferred it, of enforcing their claims against the estate of the Nabob, and therefore the Bill allowed any creditor to institute a suit in the Supreme Court for the administration of his assets. In such a suit, however, the claimants would have had to look to the assets of the Nabob, and to those only. They were not debarred, if they pleased, from proceeding against the estate of the Nabob to recover their debts with arrears of interest for eighteen or twenty years, at the rate agreed upon, which was in many cases between twenty and thirty per cent. The Bill provided for the payment, by the East India Company, of those creditors who were willing to receive in full discharge of their claims the amount that should be ascertained to have been fairly and justly due to them from the late Nabob. That was the gist of the Bill referred to. He would not run the risk of misleading the Council by giving his reading of the Act, but would refer to the very words of it. It recited that the East India Company were willing to pay in full, to such of the creditors as should be willing to accept the same in the manner therein mentioned, all such debts as should be proved to have been fairly and justly contracted by the said Nabob, or on his behalf, during his infancy, by the said Azeem Jah as Nabob Regent, such debts to be estimated in respect of monies at the amounts which might be proved to have been actually advanced or paid by such creditors respectively, and in respect of goods supplied or other matters, at the amount which should be proved to have been the fair and actual value thereof at the time when such debts were incurred, together with interest on such debts, at a rate not exceeding six per cent. per annum. It then enacted by Section XIV that any person claiming to be a creditor of the said late Nabob, who, within the period of three months from the passing of the said Act, should file in the Office of the Registrar of the Supreme Court a written declaration, stating that he was willing to receive in full discharge of all his claims against the said late Nabob, or any property to which the said Nabob, at the time of his death, was entitled either at law or in equity, or which was liable either at law or in equity, to satisfy the debts of the said Nabob, such amount as should be ascertained by the said Supreme Court to have been justly and fairly due to him from the said late Nabob at the time of his death, or to be a charge upon such property, and to remain unpaid, the amount to be estimated in respect of monies at the amount which should be proved to have been actually advanced to or paid for the use of the said Nabob; and in respect of goods supplied or other matters at the amount which should be proved to have been the fair and actual value thereof at the time when such debts were incurred, together with such interest (if any), not exceeding the rate of six per cent. per annum as should be awarded by the said Court; and that he was willing to give up any mortgage or security which he might hold upon any part of such property as aforesaid, or which should have been charged with the said debt—should be entitled, upon giving up such mortgage or security to the Receiver, to have the amount of his claim ascertained by the said Court in manner thereinafter mentioned.

Now, it turned out that Prince Azeem Jah, during the minority of

the late Nabob, had contracted debts to a large amount. It appeared that the Nabob's father died in 1825 greatly in debt, to the extent of some eighteen or twenty lakhs of Rupees. The East India Company, being desirous to free the estate, appointed Prince Azeem Jah to be Naib-i-Mooktar or Regent, and agreed to lend him thirteen and a half lakhs of Rupees, namely, four and a half lakhs in cash without interest, and nine lakhs in Company's Paper. With this liberal aid and five lakhs of Circar funds, the Naib-i-Mooktar paid off eighteen lakhs of Circar debts, bearing twenty-four per cent. interest, and reported to Government in 1826 that he had done so, and that the Circar owed nothing.

"Government then exacted a solemn promise from the Naib-i-Mooktar, that he would incur no fresh debt without their knowledge. This promise he gave in the most express terms, and repeated in several letters.

"Government also ordered him to inform all who had had money dealings with the Circar that, in future, they must look for payment only to the individuals to whom they might lend money, and that no such debts would be discharged from, or recognized as binding upon, the Nabob's income, and the Naib-i-Mooktar in reply assured Government that he had given this warning accordingly. This was in 1827."

He was now reading extracts from the Advocate General's letter of 30th May 1859, appended to the Report of the Select Committee, which were borne out by documents subsequently sent in by him. The Advocate General went on to say—

"Subsequently, and on several occasions, the Naib-i-Mooktar assured the Government (which, at his request, had increased the monthly allowance by fourteen thousand Rupees), that the Circar was quite free from debt; that there was no occasion whatever for contracting any fresh debt; that the income was not only ample for all necessary expenses, but sufficient to admit of his laying by, from 1833, a sum of one lakh of Rupees annually, to form a fund for the expenses of the young Nabob's majority.

"Nay, more, from 1833 to 1842, the Naib-i-Mooktar every year reported to Government that he had laid by this one lakh for the purpose; and in August 1842, when the Treasury was found to contain but one lakh instead of nine lakhs, the Naib-i-Mooktar sent in a memorandum, showing that the missing eight lakhs had been expended, not for the Nabob's use or in necessary expenses, but chiefly in loans to his (the Naib-i-Mooktar's) relations, namely, five lakhs and upwards to the Begum his mother, sixty thousand Rupees to Gholam Moortaza Khan, &c."

When the Nabob attained his majority in 1842, instead of finding nine lakhs in the Treasury, as he had been led to expect, for the immediate expenses of his installation, marriage, &c., he found but one lakh, and he also found that it was attempted to saddle him with twenty lakhs of debt. He repudiated altogether these debts, which the Naib-i-Mooktar had contracted. Subsequently, however, he agreed to pay five lakhs out of the twenty, which he did merely out of regard to his uncle, protesting, at the same time, that that debt was never contracted for his use or benefit, and that he was under no moral obligation to pay it. But still he agreed to pay the five lakh debt. The other fifteen lakhs were represented by what were called Tunkhy Cutcherry Bonds.

In the year 1859 a claim, preferred by Sham Doss, under the provisions of Act XXX of 1858, came on for adjudication before the Supreme Court at Madras. In the course of the hearing of that case, the Court expressed an opinion, that the words "fairly and justly" meant only what was just and fair between borrower and lender, that is, between the Naibi-i Mooktar and the creditors, and not as between the Naib-i-Mooktar and the Nabob. It was quite clear that the Nabob himself never intended to pay these Tunkhy Cutcherry Bond debts; and, had he continued to live, no portion of the revenues of the Carnatic would ever have been applied in discharge of a single farthing of this debt. The Government, in undertaking to pay the debts of the Nabob, never intended to pay any other than those which the Nabob himself was liable to pay: nor did the Legislative Council intend by Act XXX of 1858 to render the Government liable to do so. By the words "fairly and justly contracted by the Naib-i-Mooktar," the Legislature meant not all debts contracted in the Nabob's name, but such as were fairly and

justly contracted as between the Naib-i-Mooktar and the Nabob, that is, fairly and justly contracted by the Regent, for the use or benefit of the Nabob. The learned Advocate General offered to prove the circumstances under which the debts, incurred by the Prince Azeem Jah, were contracted, and to show that those debts had never been contracted for the use or benefit of the Nabob, and that the money borrowed had not been applied to his use or benefit. But the Court refused to receive the evidence, and expressed their opinion as to the construction to be put upon the Act. Prince Azeem Jah himself was examined, and stated that the debt in question was his own personal debt, for which he alone was responsible. The Court were of that opinion, and gave judgment in favor of the Government. No appeal could therefore be brought to ascertain whether the Court's construction of the Act was correct or not. The Madras Government suggested to the Government of India to amend the Act, if it was not their intention to be held liable to pay all debts contracted by the Naib-i-Mooktar ostensibly for and in the name of his nephew, although really raised by the Prince for his own purpose, and from which his nephew derived no advantage. They remarked that, according to the construction which the Court had put upon the Act, judgment must be given against the Government for a sum amounting to between thirty and forty lakhs, if the claimants should succeed in proving to the satisfaction of the Court that the money, whether raised for or applied to the use of the Nabob or not, was borrowed in his name, and that evidence to that point would of course not be wanting. The Government of India, in referring the matter to the Honorable Member for Madras, with a view to his bringing in the necessary Bill, did not do so because the decision of the Court was adverse to the Government; on the contrary, it had been in favor of the Government. What they wished was that the Legislature should declare what their real intention was in passing that Act. The Legislative Council never intended to make the East India Company pay the private debts of the Naib-i-Mooktar. It was to prevent the creditors from acting upon the construction which the Court had put upon the Act, and coming forward upon some future day and bringing a host of witnesses to prove that the money had been borrowed in the name of the Nabob, notwithstanding the Naib-i-Mooktar had sworn that these were his private debts, and that the money was not even ostensibly borrowed in the name of the Nabob.

The Judges talked of vested rights. They considered that all those creditors had a vested right, and they said, so far as he (the Vice-President) understood, that this Council had no right to take away the right. He (the Vice-President) did not admit that vested right, and thought that the decision of the Judges was wrong. If the Council did in mistake vest any right in the creditor, they did not vest it irrevocably. The sum at stake was nearly half a million, as the Advocate General had stated. The creditors could not have given credit on the faith of that Act, for those debts were contracted long before. But even admitting that the Legislature had made a mistake, they not only had the right, but were bound in justice to correct it by amending the Act. The Council heard last Saturday a most clear and lucid statement of the financial condition of the Government. What would the Right Honorable Gentleman think if he were told that, by a mistake of the Legislative Council, the Government had become liable to pay a crore or half a crore of Rupees more than he had included in his estimate, and that the mistake had created vested rights, and that the Act could not be amended. The Council did not interfere with any decision of the Judges, but simply declared that :—

"No debt contracted by Prince Azeem Jah, during the minority of the late Nabob, shall be deemed a debt or claim within the meaning of Act XXX of 1858, unless it shall be proved that it was necessary and proper that such deb should be incurred on behalf or for the use of the Nabob, and that it was so contracted ; or unless the Governor in Council of Fort St. George shall dispense with such proof."

The latter words were inserted to enable the Madras Government to pay the five-lakh debt which the Nabob had undertaken to pay. The Nabob had himself paid a part of this debt, and would have paid the rest had he lived, and as the income, from which the Nabob would have paid this debt had he lived, had lapsed to Government, it was suggested that there was something like a moral obligation on Government to discharge this five-lakh debt.

He (the Vice-President) would urge it as a principle, that no man could obtain an irrevocable vested right by a mere mistake of the Council, or by an error of the Judges. When the Honorable Member for Madras brought in his Bill, he (the Vice-President) supported it, and stated that, whether the dictum of the Court was right or wrong, the Legislature were quite competent to come forward and declare what its intention was in passing the Act; or if the Act had been ambiguously worded, and the Court were warranted in the construction which they had put upon it, to express its meaning in clearer language.

The learned Judge talked of *ex post facto* legislation and of our no longer living under the shelter of the British Constitution. Fine sounding words no doubt! Did the learned Judge mean to say that the British Constitution did not admit of retrospective legislation under any circumstances? Formerly, in England, by a fiction of law, all Acts were held to relate back to the first day of the Session in which they were passed, and this was the law until an Act was passed in the 33rd of George the 3rd to alter the law. There was an Act passed for Ceylon, imposing an export duty on rice. This was passed some time after the commencement of the Session, but retrospective effect was given to it, and it was held to be in force from the first day of the Session. In the interval between that day and the day of the passing of the Act, a person exported rice, and he was held liable for the duty. An appeal was preferred to the House of Lords, by whom it was held that he was liable to the duty by that retrospective law. Another case occurred, in which a person was arrested under a warrant. The warrant was a bad one, and in resisting it the man killed the Officer who went to execute it. Subsequently an Act was passed, confirming all judicial proceedings and rendering that warrant good. He was indicted for murder, and would have been liable to be sentenced to death for murder, for an act which was not murder at the time, but rendered so merely by the retrospective operation of the Act. He, consequently, received a pardon from the Crown. He (the Vice President) might cite many cases of this kind, but he would not detain the Council. By the constitution of America, express provision was made, that no *ex post facto* Act should be passed. That, however, was held not to apply to cases of retrospective Acts affecting Civil rights. There was nothing in the Constitution to prevent their passing a retrospective law, if consistent with justice. What was the Council then to do? As Legislators, they were bound to act upon the great principles of reason and justice. They would have been guilty of great injustice if they left the East India Company liable to pay half a million of debts for which they never intended to become liable. The Judges talked of decisions adverse to the interests of Government, as though these debts could be paid without imposing the burthen of them on the people. If the debts were to be paid at all, the money must be raised from the people. If, by a mistake of the Council, half a million of money had to be wrung out of the people by taxation, would it have been just to allow the mistake to remain uncorrected? Was it not better to amend the Act as had been done? If the Act of 1858 had not been amended, the Home Government would probably have compelled the Legislature to repeal it. This would not have been the first time that such an order had been received from Home. Honorable Members would recollect the order received in the case of Sir Thomas Turton's defalcations. In that case, under an authority from the Court

of Directors to grant relief to claimants under four Schedules, the Indian Legislature passed an Act, granting relief, not only to them, but also to creditors included in two other Schedules. This was going beyond what the Court of Directors intended; and the Home Government, remarking that the Legislature had committed a grave error in including the two other Schedules, ordered the repeal of the Act. If the Council had committed a grave error in passing the Act of 1858, were they not to rectify it? But, suppose the mistake was that of the Judges, suppose the Council had expressed their meaning clearly, and the Judges had misconstrued it, was not this Council justified in setting the matter right? The Judges complained that the Act had been passed hastily. He (the Vice-President) would only say that, if the mistake was to be corrected at all, it was necessary and proper that it should be done at once. If that had not been done, the Judges might have gone on passing decisions upon their erroneous view of the Act, and, in the course of three months (which was the shortest extent of time within which, under the Standing Orders, the Act could have been passed), nearly half a million of money might have been decreed away. The Council would then have been under the necessity of reversing those decisions, which would have been much worse than passing the Act hastily, or of leaving the Government liable to pay a large amount, for which it was never intended to make them liable. He felt so strongly that it would have been unjust to leave the Government liable to pay those debts, that, even if decrees had been passed, he should have been prepared, if necessary, to vote in support of an Act to reverse them.

There was only one point left for the consideration of the Council, and that was, ought any provision to have been made for the payment of costs incurred by the parties who had instituted their claims? There had been cases in England in which Parliament had interfered with vested rights. He remembered a case in which actions were brought by Mr. Russell, an informer against some Noblemen for penalties under the Gaming Acts to the extent of £100,000 or £150,000. An Act was passed, authorising the defendants to stop all proceedings in the actions upon payment of the plaintiff's costs. In that case the plaintiff was deprived of his right to the penalties. That right was as much a vested right as those of the creditors in the present case. Lord Mansfield had expressly declared, that the right of an informer, who sued for a penalty, was a vested right. There was another case, in which many of the newspapers through mistake had omitted to comply strictly with the law which required the name and address of the printer and publisher to be stated on the paper. It was a mere technical mistake, but the publishers of most of the newspapers had fallen into it, and very heavy penalties had been incurred. A common informer discovered the mistake and brought a number of actions for the penalties: but Parliament, notwithstanding the informer had a vested right in these penalties, passed an Act which allowed the defendants to stop the actions by paying the plaintiff's costs. In those cases the parties had infringed an Act, and had become liable to penalties for not doing that which the Legislature required to be done. There was no mistake on the part of the Legislature or of the Judges. Yet it was considered unjust to leave the parties liable to pay penalties for having inadvertently disobeyed the Act, and Parliament deprived the informer of his vested right in the penalties—and justly so. Reason and justice required that they should be exempted from the penalties, and there was nothing in the British Constitution to prevent it. In the present case, if the Government were liable to pay the debts, it was merely in consequence of a mistake either of the Legislature or of the Judges. The utmost the creditors could have done, if Act XXX of 1858 had not been passed, was to proceed against the Estate of the late Nabob, and they were not in a worse condition after the passing of Act XVI of 1859 than

they would have been if their debts had been expressly excluded from Act XXX of 1858. The only expense incurred by them, consequent on the passing of the Act of 1858, was in filing the particulars of their claims and the documents intended to be used in support of them, and in preparing for trial. There was a great distinction between the case under consideration and that of the cases to which he had referred. In the one, a penalty had been incurred for the infringement of a law. In the other, a right had accrued by reason of a mistake. It mattered not whether it was a mistake of the Council or of the Judges. Both were public servants, and there was no reason why Government should be bound irrevocably by the mistake of either, nor was it right that the people should have a burthen cast upon them by such mistake. It would be a sad thing if the British Constitution required that such should be the case. The Chief Justice, in the course of his judgment, had recourse to a fiction, and whenever he (the Vice-President) found a person resorting to fiction, he generally expected to find that he had a bad case on the facts. The Chief Justice said,

"That which the Court has declared to be the meaning of Act XXX of 1858, though the law was not so declared until the end of May last, has of course always been the meaning of the Act, and the applicant and the other claimants may well have supposed this to be its meaning."

Therefore, because the Judges thought that to be the meaning of the Act, the claimants must be presumed to have thought so too. But the question was, did they think so? Take the case of Sham Doss, who supposed he had a right of action, and went to the expense of endeavoring to prove his claim, though it was clearly a private debt due from Azeem Jah, as ultimately decided by the Court. Gunsham Doss was just in the same position, and if his claim or that of any of the other Tunkhy Cutcherry Bond-holders had been tried instead of that of Sham Doss, it would, no doubt, have met the same fate, and have been decided against him. He did not believe that Gunsham Doss or any one was ever misled by the wording of the Act, and he could not see any sufficient reason why they should have received their costs. In the cases to which he had referred, if the informers had gone on and recovered the penalties, they would have had their costs as a matter of right. But here the costs were in the discretion of the Court, and the parties would not have been entitled to costs even if they had recovered their demands, unless the Court had expressly ordered that they should have costs. The Government had voluntarily taken upon itself the payment of certain debts, and it did not follow that the Court would have given the claimants their costs, for surely if the Government came forward to pay the debts, there was nothing so unreasonable in their requiring proof of the debts as to render it proper to award costs against them.

Then, again, he thought he had satisfactorily shown that it was not the mistake of the Council, but an error of the Judges in putting a wrong construction upon the Act. The Council never intended to render the Government liable to pay these claims, much less the costs incurred in prosecuting them. In this view of the case, it was clear that, if the Judges had decided correctly, the claimants affected by this Act would not have recovered either their debts or costs. They were only in the same position after the Act of 1859 as they would have been before it, if the Judges had put a correct construction upon the Act of 1858.

Then there was another point to which the learned Judges referred. By Act XXX of 1858 a receiver was appointed. The Supreme Court under their Charter had a general power over costs. Section XXII of Act XXX of 1858 provided that—

"The Court shall issue an order for the payment of the amount so ascertained to be due, together with the costs of proving the debt, if it shall think fit to award costs. Provided that, if the amount so ascertained to be due shall not exceed the amount specified in the notice

under Section XXI., the Court shall not award costs to the claimant."

The Clause assumed that the Court had the power of awarding costs, and directed that, if they should award costs, the Court should issue an order for their payment, and Section XXV provided how this amount, found due with interest and costs, was to be paid. It enacted as follows :—

"The amount ascertained by the Court to be due to the claimant upon the investigation under Section XXII, together with such interest and costs (if any) as shall be awarded by the Court, shall be paid to the claimant by the said receiver within ten days after a copy of the order of the said Court shall have been served upon him. In case no sufficient assets belonging to the Estate of the said late Nabob shall be in the hands of the receiver to enable him to pay such amount, the same shall be forthwith paid out of the Public Treasury of the East India Company, and the said Company shall be entitled to be re-paid by the receiver out of any assets which may afterwards come to his hands. The judgment of the Court, as to the amount due to such creditor as aforesaid, for principal and interest shall, in taking an account of the debts and liabilities, and of the estate and effects of the said Nabob in such administration suit as aforesaid, be treated as *primâ facie* evidence that a debt to that amount was due to such creditor."

The object of Sections XXII and XXV was to point out how the costs were to be recovered, if awarded, with a proviso that no costs should be awarded if the claim recovered should fall short of the amount tendered by Government.

The learned Advocate General said, that there were some doubts as to whether the Court could award costs to Government against the claimants; and, in accordance with his suggestion and the recommendation of the Madras Government, the following Clause was inserted in the Act :—

"Upon any investigation under Section XXII of the said Act, it shall be lawful for the Court, except as otherwise provided by the said Act, to award costs to either party, and to cause the same to be levied in the same manner as costs in an ordinary suit."

The Judges complained of that as being a violation of the British Constitution. But they were not obliged to give costs, if they did not think it right to do so. The power was a discretionary one, and was intended to enable the Court to do justice to both parties. There was no hardship to any one. If the Court found any fraudulent or fictitious claims brought before them, they could compel the parties to pay costs; whereas the claimants were not obliged to proceed to trial at all, if they considered their demands so untenable or so unjust that the Court, in the exercise of their discretion, were likely to award costs against them.

Then the Judges were a little offended at the recital that doubts existed, whether certain debts contracted by Prince Azeem Jah, during the infancy of the late Nabob, were debts within the meaning of the Act of 1858. It was stated by the Chief Justice that the Imperial Parliament never expressed any doubt as to the correctness of a judgment of a Court of law. The assertion, as stated by the Select Committee, was made boldly, but it was not correct. He might cite many instances to the contrary; but it was sufficient to refer to one well-known case, which, as well as the debate which took place upon it in Parliament, appeared to have been forgotten by the learned Judge. He meant Mr. Fox's celebrated Libel Bill. In the debate upon that Bill, the decision of the Court of King's Bench, in the case of the King against the Dean of St. Asaph, as well as the doctrine laid down by Lord Mansfield, were called into question and commented upon. Mr. Fox at first moved for a grand Committee on Courts of Justice, to enquire into some late decisions of the Courts in cases of libel, but that motion was withdrawn upon the suggestion of the Attorney General. Mr. Pitt, in supporting that suggestion, remarked :—

"In the first place, if any intention were entertained of going into an investigation of precedents and authorities, with a view to framing a declaratory law, it would be a work of more time than the period of the Session afforded them any hope of completing before Parliament should be up. In the next place, he should not think it necessary or advisable to pass a declaratory Bill, stating not only what the law was, but also what it had been, because that would, in some sort, imply a censure on

the Judges, and indirectly accuse them of not having adhered to the law. The whole object, he thought, might be achieved by a short Bill enacting what the law ought to be, and thence regulating the practice in future."

Mr. Fox consented to withdraw his motion, and afterwards introduced his Bill, which recited that doubts had arisen, &c., throwing doubts upon the decision in the case of the King against the Dean of St. Asaph. The Solicitor General remarked, that the manner in which the Preamble was worded did not appear to him to be free from objection, because he believed that what was there stated as a fact was not generally admitted. If he were to be governed by that which was the usual guide of Courts, precedent, he must say that doubts did not exist whether the right of Juries to give a general verdict in criminal prosecutions on a general issue joined extended to libels, so as to leave the Juries judges of the law as well as of the fact. Mr. Erskine declared that, sooner than consent to give up the Preamble, he would abandon the Bill for the present altogether, and leave it to the people of England to protect their rights themselves when on Juries, until a more favorable moment might arise, when Parliament would be prepared to recognise a clear unquestionable principle of law, that their rights in cases of libel were the same as in all other criminal trials, in none of which their privilege to pronounce a general verdict had ever been disputed. The Bill was subsequently passed, reciting the doubts. This showed that Parliament asserted the right to doubt the law laid down by the Judges of England, and even to declare not only what the law was, but what it had been. He thought that this Council might reasonably be allowed the privilege of doubting whether the Madras Judges were correct when they declared the meaning of the Council to be that which they never intended.

But to proceed. The construction of the Judges could not be appealed against. It was a mere dictum or expression of opinion given as a reason for refusing to admit the evidence tendered by the learned Advocate General. It was no more a decision than the language complained of, which was used by the Chief Justice as a reason for allowing the hearing of Gunsham Doss's case to stand over, and no one would, he (the Vice-President) thought, dispute the right of the Council to doubt or even to deny the correctness of that assertion. It could not be expected that this Council would pass an Act, declaring that the Government was liable to pay all monies borrowed by the Nabob Regent, in the name of the Nabob, whether it was necessary or not to borrow them, and whether or not they were applied for his use, and then to enact that all such claims should be disallowed. It was more courteous to the Judges to recite doubts than to set up the opinion of the Council against that of the Judges, and to recite that the Judges had declared that to be the meaning of the Legislature which they never intended, and which their words did not express. It was doubtful, to say the least of it, whether the Judges had put a right construction upon the Act, and it was perfectly justifiable to recite that doubts existed. The Judges had expressed an opinion one way, the Council and the Advocate General another, and thus the doubts were occasioned. The Council knew what their real intention was, and it was their duty to express it.

He would not detain the Council any longer, and without further remark would propose to move the Resolution of which he had given notice, with a view to its being placed on the records of the Council, as an answer to the charge which the learned Judges had brought against the Council. The terms of his Resolution were, that the remarks of the learned Judges of the Supreme Court at Madras on Act XVI of 1859, in delivering judgment on the 8th August 1859, on the case of Gunsham Doss, were unwarranted by the facts, and were wholly unjustifiable.

Mr. SCONCE said, he rose with very great reluctance to state his inability

to agree to the course proposed by the Resolution just moved by the Honorable and learned Vice-President, and his reluctance was so much the more, as the subject brought under discussion was held to involve the honor and justice of this Council He must, at all times, be unwilling to dissuade the Council from adopting measures directed to the vindication of its honor or the justice of its proceedings, nevertheless he was not satisfied that the course proposed to us on the present occasion was the best calculated to effect those objects.

One preliminary remark he would make. He was perfectly free to admit that the obligation which the Government was content the Legislature should impose on it, to pay the debts of the late Nabob of the Carnatic, was spontaneous and liberal. There was no question of forcing on the Government the payment of debts which it did not express itself willing to undertake. He was quite ready to admit, therefore, that under such circumstances the Executive Government might limit the terms of the law to which it was prepared to assent.

But in coming to the present case, as it arose upon the observations of the learned Judges of the Supreme Court, he must say that, as he understood the matter, it did not turn on the liberality of the Government, but on the jurisdiction given to that Court by the Act of 1858, and on the effect had on the suitors who came into Court under the invitation of that Act by the subsequent Act of 1859.

As a rule, it must always be objectionable in any Legislative Chamber, two years, or any longer period after the enactment of any law, to bethink itself of the grounds upon which the law was supposed to have been enacted, as if it were right and proper in the general case to pass a law first, and consider the reasons afterwards. Besides, it might happen that the constitution of the Council would be considerably altered, and it did happen in the present case that three of the Members now present took no part in the enactment of Act XXX of 1858. It seemed to him (Mr. Sconce) very undesirable that those Honorable Members should now be called upon to travel beyond their province, by interfering in a matter with which they had no connection.

Now, as to the more immediate subject of the present discussion, he must say that very great consideration should be given to the different position of the learned Judges of the Madras Supreme Court and of this Council. The Judges had before them nothing but two bare laws, and it was the duty of the Judges to interpret those laws, and the connection of the one with the other, from the express form of words in which they were drawn. But it was not so with the Legislative Council. This Council might be supposed to know its own meaning, and to be able to declare that meaning irrespective of the language which was intended but might have failed to express it. And, again, this Council was in a position to refresh its recollection, and even to re-assert the policy of its laws by referring to the communications, such as those received from the learned Advocate General of Madras, and the correspondence transmitted by him. But, obviously, he thought those means of interpreting the laws were not available to the Judges, and if available, it was not clear that they could have used them. He did not think it incumbent or proper for himself to offer his own construction of Act XXX of 1858, and what was more, he was thoroughly satisfied, from the remarks of the Honorable and learned Vice-President, that the view which he had expressed of the meaning of that Act now, he entertained at the time of its enactment. Nevertheless, it appeared to him that, when called upon to express his approval of the Resolution now submitted, it was his duty to look to the construction which the learned Judges put upon the two Acts of 1858 and 1859. He was not to question the competency of the Judges. To their jurisdiction claims arising under the Act were submitted, and he felt that the interpretation put

by the learned Judges on those Acts should be his own. He did not feel called upon to say any thing as to the language adopted by the Judges. Wherever it was objectionable, he had not to defend it. But, looking to the subject matter of their judgments, he felt bound to submit to the opinions of the Judges, that the latter Act contained provisions that very materially changed the provisions of the first law, and that claimants brought into Court, upon the faith of the Act of 1858, were injuriously affected by the Act of 1859. In this sense the Judges, as he understood, characterized the last Act as *ex post facto* legislation. That is they objected to it as retrospective legislation; saying further, that it violated the first principles of legislation and of justice; and that this case was a very bad case of the kind. Now, it might be that, as argued by the Honorable and learned Vice-President under various circumstances, laws of an *ex post facto* nature were occasionally passed by the British Parliament. Upon that point he would not enter. But he might safely say that the learned Judges of Madras repudiated *ex post facto* legislation in its broad and popular sense, and sure he was that no Honorable Member in this Council, certainly not the learned Vice-President or the learned Judge on his right, would be inclined to tell us that, in the sense referred to, the learned Judges were in error. He would call attention to what Section XIV Act XXX of 1858 required. All creditors who desired to avail themselves of the mode of adjustment offered through the Legislature by the Government, were required to lodge their claims within three months from the promulgation of the Act. They had little time to consider. All such claims must have been filed before the new Act came out in 1859, and therefore it seemed to him that, looking to the construction put by the Judges on the two laws, and seeing that in their opinion creditors suddenly pressed into Court by one law, were summarily ejected by the second; the Judges might well give expression to the opinion entertained by them as to the injurious and retrospective operation of the Act of 1859.

Further, it seemed to him that the question of the amount of costs cast on suitors, whose cases should break down from the more stringent tenor of the second law, might fairly influence the opinion of the Judges. For example, a petition had been presented to the Council by Narain Doss, in which it was stated that he had incurred costs to the amount of sixteen hundred Rupees: and again, that under Section XIV of Act XXX of 1858, he had made over to the Receiver certain property mortgaged to him, and that this property had been sold, and the proceeds carried to the general estate. He (Mr. Sconce) was very averse to show how far the Act of 1859 differed from the Act of 1858. It could not be denied, however, that in words, at all events, the Act of 1859 went much beyond the Act of 1858. By the most recent law, proof was required from the creditor that the money lent by him was necessary for the use of the Nabob. Now, what reason was there to expect that the creditor would adduce any such proof? The Nabob was an infant, endowed with a kingly revenue: and it was in vain to expect that a creditor could justify a loan by showing the necessities of an infant so circumstanced. The Nabob appeared to have possessed several palaces, and to have been surrounded with a large retinue: and creditors might well be excused being ignorant of the expenses of an establishment concerning which the Regent, in a letter included in the printed correspondence, declared to the Government, from his ignorance of the unavoidable charges of the Nabob's establishment, he had become himself embarrassed. So far, therefore, he might say he was unable to agree that the learned Judges had erred in their apprehension that the Act of 1859 did import conditions varying materially from that of the first Act, and that, as regards the claims before the Court, it was of an *ex post facto* character.

He did not know whether it had struck Honorable Members, as it had

struck himself, that they had in this matter a succession of small seditions. There was the somewhat ineffectual *emeute* of the learned Judges against this Council, and there was the more successful explosion of the learned Advocate General of Madras against the decision of the Judges. He was well assured that he was correct in saying that the declaratory Act of 1859 was introduced at the suggestion of the Advocate General, in a letter written by him immediately after the dictum or opinion of the Judges had been intimated as to the bearing of Act XXX of 1858, and indeed the Select Committee had fully adopted the recommendation and views of the Advocate General in the Report recently circulated to us. Now, he ventured very earnestly to entreat the attention of the Council to what he was about to state. The Act of 1859 was based, as he had said, on the representations of the Advocate General. Now, two letters of the learned Advocate General had been printed for our use, one dated 30th May 1859, and the other dated 20th August 1859, and both gave very nearly the same representation of the circumstances under which the Regent contracted debts on behalf of the Nabob, his nephew, during his minority. He would refer the Council to the 6th para. of the second letter, in which it was said—

"As a general principle, there is no question that *ex post facto* legislation is highly objectionable, and so far the Judges' remarks must be admitted to be correct; but the Court seems to me not to have sufficiently considered the particular circumstances which called for and justified the passing of this particular Act, and which I shall here shortly re-capitulate, in case Government should wish to submit them for the consideration of Her Majesty's Secretary of State for India, in case the subject should be discussed in Parliament."

Here, it appeared to him (Mr. Sconce) that even the Advocate General supported the observation of the Judges as to *ex post facto* legislation; only he added, that the Judges did not sufficiently consider the particular circumstances of this case, and he went on to show what the circumstances were that the Judges overlooked. Now, he (Mr. Sconce) would say he was well satisfied that, if the Advocate General were present at this time to hear what he was about to state, the learned Gentleman would recede from the position he took up in his communication with the Government, and would acquit the Judges of not having sufficiently considered the facts which the learned Gentleman thought justified his opinion of the debts contracted by the Regent. It would be seen from the 8th and 9th paragraphs of the letter of 20th August 1859, and in the 20th paragraph of the letter quoted by the Select Committee, that the Advocate General endeavored to discredit the claim of creditors by showing that they had been warned by the Government not to lend money to the Regent, and that no such debts would be held to bind the Nabob, or be paid from his revenues. The latter paragraph was as follows:—

"Government also ordered him to inform all who had had money dealings with the Circar, that in future they must look for payment only to the individuals to whom they might lend money, and that no such debts would be discharged from, or recognised as binding upon, the Nabob's income, and the Naib-i-Mooktar in reply assured Government that he had given his warning accordingly. This was in 1827."

Here there could be no doubt of the meaning of the Advocate General. He plainly said that the creditors could not look for payment, because they had been warned by the Regent not to lend him money, and the Regent had assured Government he had so warned them. But he could have no difficulty in satisfying the Council, that the Advocate General misunderstood the facts of the case. In the 4th paragraph of the Regent's letter of 28th January 1828, at page 28 of the printed papers, would be found the statement that the Regent did make to Government: and it will be seen that as to himself he gave no warning at all. He wrote—

"I have at the same time explained to all the creditors that they must look for the repayment of such debts *as may not be incurred by the Circar* to those to whom their money has been lent."

He expressly excepted the debts that might be incurred by the Circar, that is himself, on the part of the Nabob, and intimated in the plainest language, that the warning given by him applied to debts contracted by others. Indeed, in the 3rd paragraph of the same letter the Regent reserved to himself the option of borrowing money; only he said it should not be a large sum. He would repeat then that the loans made by the creditors to the Regent could not be discredited on the supposition that they had been warned against any such transaction; and that the correspondence did not bear out the statement of the Advocate General upon that point.

But, again, he would show a very material misconception of the Advocate General on another point. In the 21st paragraph of the letter quoted by the Select Committee, the Advocate General wrote as follows:—

"Subsequently, and on several occasions, the Naib-i-Mooktar assured the Government (which at his request had increased the monthly allowance by fourteen thousand Rupees) that the Circar was quite free from debt; that there was no occasion whatever for contracting any fresh debt; that the income was not only ample for all necessary expenses, but sufficient to admit of his laying by, from 1833, a sum of one lakh of Rupees annually, to form a fund for the expenses of the young Nabob's majority."

Here the object of the Advocate General was obviously to intimate that, after a general warning had been given to all parties concerned against lending or borrowing money, the Regent had constantly assured Government that he had borrowed no money on behalf of the young Nabob, and that the Circar, that is the Nabob, was free from debt; and that accordingly, in the face of such assurance, the creditors were not entitled to consideration. Now, he would ask the Council again to refer to the printed papers for the disproof of this statement. At page 30, in a letter of 3rd January 1831, it would be found that the Regent admitted he had borrowed money to the amount of five lakhs and ninety-one thousand Rupees, or nearly six lakhs: nor was this all. The mere assertion by the Nabob, though repeated in subsequent letters, might not go for much: but what seemed to him (Mr. Sconce) to have a close bearing on the merits of this business was that the Governor of Madras, in repeated letters, recognised the existence of these debts, and permitted or required the Regent to repay the money borrowed out of the income of the Nabob. The letters to which he referred were those of 15th February 1831, 4th November 1831, and 19th March 1832. The case then stood thus—the Government disapproved of the Regent borrowing money on behalf of the infant Nabob, but at the same time his power to do so was admitted; he stood forth to the creditors as vested with that power, and with the sanction of the Government, the money lent was to be repaid. Was it the intention of the Government or of the Legislature that Government should disavow now the fairness of the debts that were contracted up to 1831? Suppose that any portion of the debt of five lakhs and ninety-one thousand Rupees, which had been borrowed up to 1831, was undischarged at the Nabob's death, then he feared that the Act of 1859 acted unfairly towards the creditors, by putting them upon proof which nearly thirty years before the Government of Madras had dispensed with.

Upon the whole, then, he was not satisfied to follow the course which the Resolution, moved by the Honorable and learned Vice-President, proposed, and he should vote against its adoption.

SIR CHARLES JACKSON wished to say a few words in answer to what had fallen from the Honorable Member for Bengal. The Honorable gentleman considered it inexpedient to call upon the Council, as now constituted, to consider the policy and character of the Act of 1858, inasmuch as only three of the Members present were connected with the passing of that Act. But the Honorable Member forgot that it was the Act of 1859 which was now attacked by the Judges,

and no less than seven Members now present were also in the Council when the latter Act was passed. Then the Honorable Member said that the position of the Judges was different from that of this Council. The former had only the bare words of two Acts before them. Whose fault was that? The learned Advocate General had offered to lay before them evidence which would have put them in possession of all the surrounding facts of the case, but they refused to receive that evidence. In answer to the remarks which the Honorable Member for Bengal had made on the subject of retrospective legislation and about the Judges having taken the popular view of the question, he would admit that retrospective enactments were, as a general rule, to be avoided. Now, if the present case was merely one of the nature suggested—namely of a suitor being brought into Court by one Act, and turned out of it by another—the case would have assumed a different complexion. But the questions were, *first*, whether the learned Judges were right in their construction of the Act of 1858; and, *second*, whether the claimants had any vested rights under the Act of 1858. He did not mean to follow the Honorable and learned Vice-President in his very able statement; but he would just observe that the learned Judges at Madras had lost sight of one very material fact in the case, namely, that Government were not liable to pay a single pice of these debts, and that their offer was a purely voluntary one. One would fancy, from the language of the learned Judges, that the creditors had advanced the money to Government, and that Government was really indebted to them. But it was nothing of the kind. Suppose the Act of 1859 had been incorporated with the Act of 1858, what right would any creditor have had to complain? If the creditors did not accede to the offer made by these Acts, they might proceed by suit, and enforce their legal rights against the Nabob's estate. The Court of Directors very liberally chose to give them something more than this legal right, and because that voluntary offer, putting the case most favorably for the claimants, was couched in ambiguous language, it was gravely contended that the Council had no right to explain what was the real meaning of the Court's offer, as the first Act was considered as giving the creditor a vested right. Now what did the real injury to the creditor amount to, putting it at the highest? Merely this, that the position of a creditor coming in under Act XXX of 1858 might possibly be altered by the Act of 1859, in respect of costs incurred under the original Act which might not be allowed under the new Act. He (Sir Charles Jackson) would say that the creditor had no right to complain, because the donor, as soon as he found the nature of his gift was misunderstood, corrected the mistake and set himself right; but he might perhaps complain if that mistake had altered his position, and had mulcted him in costs. But surely this question of costs was not a question involving the British Constitution. It was difficult to see how the creditors would, under any circumstances, have recovered these costs from the Government, even if they had made out their claim; and the learned Vice-President had shown the difficulty we should have been in, if we had thrown the costs on the Government—costs which, according to our opinion (though from courtesy to the Judges, we did not so express it), could only have been incurred under an erroneous construction of Act XXX of 1858.

The Honorable Member for Bengal then referred to the Petition of one Narain Doss, which he (Sir Charles Jackson) had not had the benefit of seeing. And from that it appeared the petitioner had given up land, which had been mortgaged to him, to the Receiver under the Act, in order that he might come in and prove his claim under Act XXX of 1858, and that the property had been taken possession of by the Receiver; while, on the other hand, the Act of 1859 deprived him of the chances of making out his claim. If these facts were true, he (Sir Charles Jackson) saw no difficulty, for the Receiver would, in such a case, be bound to give up the mortgaged property or its proceeds.

It was preposterous to suppose, and he did understand that the petitioner was bold enough to assert, that the Government was going to keep that mortgaged security, and at the same time oppose the claim of the petitioner. But, as he had said before, this was not a question of costs. If the Council came to the conclusion that their meaning had been misconstrued, they were not only justified in correcting it, but they were bound to do so, for they had a duty to discharge to the Government and the Public as well as to those creditors.

Then it was urged by the Member for Bengal, that the claimants were put to much greater difficulty by the later Act, and obliged to prove that their claims were necessarily incurred for the use of the Nabob, according to the Act of 1859. Well, that came round to the same question again, for such was the original intention of the Council, and we say, as stated in the Report of the Select Committee, we were bound to declare that original intention. But, as a matter of fact, there would be no great difficulty in proving that the debts were incurred necessarily, if the facts were so, for the claimants could obtain the evidence of the Regent Azeem Jah to prove it, and it is obvious that the interest of Azeem Jah himself would lead him to favor the claimant if he could, as he thereby discharged himself from liability. The Honorable Member had mentioned a letter from Azeem Jah, in which he stated that he did not know the affairs of the Circar; but that was evidently an excuse then offered to justify his conduct, and was a mere general statement not applicable to these creditors. He would very probably be able now to say whether the claims were received for the use of the minor, or not.

The Honorable Member for Bengal lastly went into a long detail of the statements made by the Advocate General and set out in the Report of the Select Committee, which he contended were in some points incorrect; but the Report of the Committee did not refer to the Advocate General's letters as conclusive upon any facts, but merely with the view of showing upon what statements this Council had acted in passing these Acts, and of explaining what they meant by the words "fairly and justly." He (Sir Charles Jackson) felt it impossible to add a single word to the very clear statement of the Honorable and learned Vice-President, but he thought it necessary to say these few words in answer to the observations of the Honorable Member for Bengal.

SIR BARTLE FRERE said, that after what had been stated by the Honorable and learned Vice-President and the Honorable and learned Judge opposite (Sir Charles Jackson), it was quite unnecessary for him to say anything regarding the vindication of the former proceedings of the Council, which was embodied in the Report of the Special Committee, and which appeared to him (Sir B. Frere) to be as complete and convincing as it was possible for such a statement to be. It was clearly very advisable that the Report of the Special Committee should be made as public as the statements of the Madras Judges, to which it was in effect a reply; but in considering how this could be done, it struck him that the motion now before the Council was open to some risk of leading to a rejoinder from the Bench of the Supreme Court at Madras, and the result might be a sort of altercation between the two bodies, which would not be conducive to the dignity of either, and could lead to no result, but such as must prove in every way injurious to the cause of justice and good Government.

Again, the motion would not meet the possible evil which had been glanced at by the Honorable and learned Vice-President, when he pointed out the injustice of making the Indian Revenues liable for the costs in this case. There was nothing definite on record as to the amount of those costs. They might be sixteen hundred Rupees, as conjectured by the Honorable and learned Judge opposite (Sir Charles Jackson), or they might be much more; but whatever their amount, it was quite possible and probable that an effort would be made by a motion in Parliament, or some other means, to move the Secretary of State to

pay them, and it was very desirable that the Secretary of State should have the means of knowing exactly how the case stood, and of resisting such a claim.

He (Sir B. Frere) would therefore put it to the Honorable and learned Vice-President and to the Council generally, whether the better course would not be to forward the Report of the Select Committee to the Executive Government for the purpose of being transmitted to the Secretary of State, and leave him to deal with the case as he thought best.

THE VICE-PRESIDENT said, he scarcely thought that the course proposed would be sufficient. The Judges had attacked the Council, and the Council not only had a right, but was bound to defend itself. There was a very important principle involved in the question, namely whether, if that Council having made a mistake, and afterwards rectified it, they should be liable to the imputation of passing a law of the grossest *ex post facto* character? or if the Judges should fall into an error in construing an Act, might not the Council correct the error without its being declared from the Bench, that the legislation was "of the grossest *ex post facto* character," that "it violated the first principles of legislation and of Justice," that "the rights of every person throughout British India were in jeopardy," and that "we no longer lived under the shelter of the British Constitution?" He (the Vice-President) thought that, after such an attack had been made on the Council, they were bound to justify their conduct and assert how unwarranted and unfounded was the charge made against them. His object was to send Home this expression of the opinion of the case with the other papers, so that the Secretary of State for India might see how the case stood, and know what was the opinion of the Council with reference to the Act after they had considered the remarks which the Judges had made upon it. The Judges had gone out of their way in making any such remark. There had not been the slightest necessity for their making any observations of the kind. If they had thought the claimants had grievances in the matter, they could have said so, and in granting the petition, have thus given the parties time to forward their case as desired. But to cast such reflections on those who made the laws upon which it was the Judges' duty to act, and telling the people that they would no longer live under the shelter of the British Constitution if the Government at Home should not order the Act to be repealed, was a monstrous and novel procedure on the part of any British Judge sitting on the Bench.

The Honorable Member for Bengal had said that the learned Judges had not the whole of the facts before them. If so, why did they express an opinion without having a knowledge of the facts? It was scarcely to be supposed that he (the Vice-President), holding the high office which he had the honor to fill, could wish to infringe upon the rights and privileges of the Judges; but he felt bound to say that, on this occasion, the learned Judges of Madras, in making such remarks as they had done from the Bench, had very far exceeded that liberty of speech which ought to be allowed to them.

He (the Vice-President), before he sat down, wished to allude to the remarks made by the Honorable Member for Bengal with reference to the letter from the Governor of Madras, dated February 16th, 1831, relating to the debts contracted by Prince Azeem Jah. In that letter the Governor in paragraph 4 said:—

"It is with great regret that I find myself compelled to observe that your Highness's general statement of the finances of the Circar, contained in your note to the Government Agent, dated 3rd January last, is confused and unsatisfactory, and that your explanation of the reasons for contracting so large an amount of debt is inadequate. These documents exhibit a state of things as contrary to the expectation which your Highness held out, as it is *conclusive* of the hopes in which the Government indulged, when your Highness entered upon the responsible office of Administrator of the Nabob's affairs, during His Highness's minority. Instead of having made a reduction in the Circar's annual expenses to the extent of Rupees 4,03,355, as proposed in your plan, dated the 6th December 1825, your Highness has, since that period, contracted debts to the amount of Rupees 5,91,810—a

debt which, one-fourth of your promised savings, if carried into effect, would have rendered it unnecessary to incur. Why these savings were not made, no sufficient reason is given."

To this Prince Azeem Jah replied in a letter, dated 1st March 1831:—

"Having thus made all the necessary statements, I have now the honor to state the primary object which I have had in view from my first appointment as Naib-i-Mooktar, and to assure which to your Excellency, I do hereby make a solemn promise, that I shall, by observing all the particulars hereinbefore stated, and by discharging all the present debts of the Circar by the end of the next year from the balance of the one-fifth of the last, present, and next years, save positively from the year 1833 a sum not less than 1,00,000 Rupees, but more, if possible, in the Nabob's Treasury."

So that the Naib-i-Mooktar did actually promise to save in three years sufficient, not only to have paid off the debts incurred, but also to leave a surplus of one lakh a year. But it appeared that, instead of their being nine lakhs in the treasury, as the Nabob expected, when he came of age, there was only one lakh. The Naib-i-Mooktar then admitted that he had taken the eight lakhs out of the Treasury, and lent part of it, upwards of five lakhs, to the Begum his mother, and the rest to other parties. Thus there had actually been a saving of nine lakhs, but as the Naib-i-Mooktar had withdrawn and lent, as he had said, nearly eight of those lakhs, there remained only a little more than one lakh for the Prince when he became of age. This showed that the statement made by the Advocate General was correct. But whether such statement were correct or not, was not the real question. The question was, did the Council make a mistake or did they not? and if they did make a mistake, were they right in correcting such mistake? or ought they to have allowed the mistake to go uncorrected, and left the Government liable to pay nearly half a million sterling, which they had never agreed or intended to pay? It is certain that this Council never intended to render the Government liable to pay the money borrowed by the Naib-i-Mooktar for his own use, even though he might have borrowed it in the name of the Nabob. The Honorable Court of Directors, not being liable to pay any of the debts, had surely a right to say what they would, and what they would not pay.

Again the Council did not interfere with the past; they did not nullifiy any decision passed by the Judges or declare what the law had been, but merely declared what should be the law for the future. The Act did not affect any debts contracted upon the faith of, or after the passing of the first Act. The point at issue was, whether the course taken by the Council justified the Judges in using the expressions under consideration.

On the only other point alluded to by the Honorable Member for Bengal, of the creditor who had sent in his mortgage deeds, he (the Vice-President) would remark that hte fact did not affect the question. If the creditor was a creditor of the Nabob's, he was entitled to recover his debt: if he was only a creditor of Prince Azeem Jah, he ought not to have sent in his mortgage deed. In that case, however, he would be entitled to have them returned, or if the property had been sold, he would be entitled to the proceeds. He felt sure that there could be no desire to do any thing inconsistent with justice and equity.

MR. WILSON said, he felt very great hesitation as to the line he should take in advising the Council upon the course which they ought to adopt with respect to the Motion under discussion. He thought they were in a position of great delicacy. On the one hand they had to uphold the dignity of their position as the only authorised law makers for this Empire, and on the other hand they must not forget the respect due to the dignity of the Bench. But the difficulty he felt was this, what practical conclusion would be arrived at by the course proposed to be taken? As his Honorable friend opposite (Sir Bartle Frere) very properly remarked, if this Resolution were passed, it could hardly be expected that the matter would stop there. He could only say for

himself, that language of this nature, coming from the Bench, would rather raise in his mind an apprehension that the matter would not be allowed to rest where it was, if the Resolution were adopted. Was the Council obliged to support its own dignity by noticing the criticisms of the learned Judges? No doubt the quarter from which they proceeded was a high and influential quarter. But when Judges departed from their duty of expounding the law, as they frankly admitted they had, and passed strictures on those who made the law, the question arose, however high and dignified their position, whether the Council should notice any observations they made under those circumstances? Was it necessary for the dignity of this Council that they should do so? He did not think that the House of Commons would take such notice of a matter of this kind. If that Body were to do so, they would treat the matter as a breach of privilege, and the parties would have to answer at the bar of the House. But how far the House of Commons had the power of calling before it one of the Judges of the Superior Courts, he knew not, for he was happy to say that no case of this kind had ever occurred. Could not the Council rely upon the dignity of its own position? Was there nothing in public opinion to rely upon? Were the Council to be so fearful of their reputation that they could not rely upon the able statement which had been made to-day? The Council was still a new Institution, and he did not know how far, by law or by custom, it had the power to deal with questions of this kind. The British Parliament was the only authority competent to take the initiative to remove a Judge in England. He felt that the question was a good deal complicated, and that the danger would be rather increased by the course which this discussion had taken, by entering into the merits of the original case, and also into the proceedings of a long anterior period. The discussion could hardly be carried further without angry feelings being engendered, and, in the meantime, whilst the controversy was being continued, the Judges might be called upon to decide upon the merits of questions in dispute concerning those claims. He thought that the Council could not sufficiently thank the Honorable and learned Vice-President for his clear statement, and for the calm temper and high tone which he had adopted. He could not help feeling, however, that the dignity of this Council did not stand in need of any formal Resolution to vindicate it. To judge of this case, it was not necessary to go farther back than the period when the East India Company voluntarily offered to pay what no man could make them liable to do. Surely, when they did so, they had a full right to make any condition they pleased. If, in expressing their intention, any doubt existed, by reason of any mistake or ambiguity, it was not only justifiable, but the bounden duty of the Council to lose not a moment in correcting it. Nothing was more common in the Acts of the British Parliament than to read in the recital thereof the words "whereas doubts have arisen, be it therefore enacted." Therefore, on the merits of the case, he had no doubt. As to the policy of it, he would only say that it would be more consistent with the feeling of what was due to the dignity of this Council that the Honorable and learned Vice-President should rest content with moving that the Report of the Select Committee be received and sent to the Secretary of State. He begged that the Honorable and learned Vice-President would pardon him for offering this suggestion; the only justification he would offer for doing so was that he thought that it would be for the public interest if that course were taken.

THE VICE-PRESIDENT felt much obliged to the Right Honorable Gentleman for the remarks he had made, but he (the Vice-President) felt that they ought to do more than merely send up the Report of the Select Committee to the Secretary of State. The remarks of the Judges were made upon an application, that the hearing of the claim of Gunsham Doss might be

postponed until the first term of next year, or until such other time as the Court might think fit, on the ground that the claimant himself and a great number of the claimants were injuriously affected in the prosecution of their claims by Act XVI of 1859, and were about to petition Her Majesty's Secretary of State for India to procure the disallowance of this Act, and also to petition the Imperial Parliament to repeal it. So that the Chief Justice not only granted the application and postponed the hearing, as solicited, but also in effect backed that appeal, by declaring that the application and the proposed petition were to be supported on public grounds; that the case of the petitioner was the case of the community at large, for, if such legislation was allowed to stand, and to serve as a precedent for future legislation, then the rights of every person throughout British India were in jeopardy, and we no longer lived under the shelter of the British Constitution.

Thus, not merely deciding it was a case which ought to stand over, but actually backing that petition with a judgment in favor of it.

SIR CHARLES JACKSON said that the Council must do one of two things—they must either do something in the matter, or they must leave it alone. They could not leave it alone. They had heard that a Petition from those claimants was going Home to the Secretary of State, backed as it would be by the opinion of the Judges. Under these circumstances, the Secretary of State would expect this Council to forward to him their opinion in the case. Setting aside altogether all questions of a personal nature, this Council, whose Acts were liable to review at Home, had to explain the case for the information of the Secretary of State in Council. Then, if they were to do something, he thought it would be insufficient to send Home the Report of the Select Committee, as it would be only an exposition of the views of four of the Members of that Council. He was very anxious that they should be unanimous in whatever they did, and he would therefore propose that the Report of the Select Committee should be adopted by the whole Council, and forwarded to the Secretary of State. This would be a sufficient expression of their opinion in the matter.

THE VICE-PRESIDENT said, he would be very glad to adopt the suggestion of the Honorable and learned Judge. In doing so, it appeared to him that his object would be perfectly as well answered as by the course proposed by himself. Rather than act upon his own view, he was quite willing to assent to the proposition of transmitting to the Secretary of State for India the Report of the Select Committee adopted as unanimously as possible by the Council.

MR. WILSON rose to explain that he had no wish that the Council should refrain from expressing an opinion upon the matter. He only objected to their passing a Resolution in the manner proposed, as he thought that it would lead to endless altercation, which would have no good effect, and add nothing to the dignity of their proceedings. It would be better perhaps to adopt the Report of the Select Committee, and then transmit it to the Secretary of State, who alone had the power of dealing with such matters.

The Motion was by leave withdrawn.

THE VICE-PRESIDENT then moved that the Report of the Select Committee be adopted and transmitted to the Secretary of State for India.

Agreed to.

THE VICE-PRESIDENT moved that Sir Bartle Frere be requested to take the Report to the President in Council, in order that it might be transmitted to the Secretary of State.

Agreed to.

NOTICE OF MOTION.

MR. WILSON gave notice that he would next Saturday move the first reading of a Bill for extending to the whole of India a system of well secured convertible Paper Note Currency.

REGISTRATION OF ASSURANCES.

MR. FORBES moved that the Bill "to provide for the Registration of

Assurances" be referred to a Select Committee consisting of Mr. Harington, Sir Charles Jackson, Mr. Sconce, and the Mover.

Agreed to.

NOTICES OF MOTION.

Mr. LeGeyt gave notice that he would next Saturday move the third reading of the Bill "for regulating the establishment and management of Electric Telegraphs in India."

Also the third reading of the Bill "to make provision for the speedy determination of certain disputes between Workmen engaged in Railway and other public works and their employers."

The Council adjourned.

Saturday, 3rd March 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. B. Harington, Esq.,
Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon. J. Wilson,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and A. Sconce, Esq.

STAMP DUTIES.

The CLERK presented to the Council a Petition from certain Life Assurance Associations, praying that transfers or assignments of Policies of Life Assurance by endorsement or writing be exempted from Stamp Duty.

Mr. SCONCE said that the subject matter of this Petition had already been provided for in the Bill relating to Stamp Duties now before the Council. He should therefore only propose that the Petition be allowed to lie on the table.

Agreed to.

PAPER CURRENCY.

Mr. WILSON rose and said:—

Mr. President,—Sir, when I had the honor, a fortnight ago to lay before the Council an exposition of the Financial policy of Her Majesty's Government of India, and to propose that the people of India should be subjected to some new imposts, in order to relieve the necessities of the State, I then gave an assurance, on behalf of Government and myself, that we were deeply imbued with the necessity of taking stringent and bold measures for securing to India at the same time such administrative reforms as were urgently required, not only in order to secure the greatest possible economy, but the greatest efficiency in the public service. In pursuance of the notice which I gave last week, I now rise to propose our first measure in redemption of the pledge I then gave. Sir, I believe there is but one opinion throughout India, and I will add at home, that the currency of this great dependency of the British Empire is in a most unsatisfactory state; there may be, and no doubt there are, many different opinions as to the mode in which its glaring defects can be best amended; but at least all are agreed that amendment is loudly called for. And I think Honorable Members will agree with the Government in regarding this as one of the most important reforms in administration, and as one calling for the earliest attention of the Government and the action of this Council. Sir, I must say that I know no question of greater importance to the commerce, the industry, and the material well-being of a country, than that of the laws which regulate its currency. If your monetary condition be unsound, the country will be exposed, in an aggravated form, to all those vicissitudes which overtake trade, for a time paralyze industry, and impoverish the people—if, on the other hand, it be based on sound and solid principles, we may rest contented that we have at least taken

every precaution within our power, if not for altogether preventing those vicissitudes, yet for alleviating their consequences and shortening their duration.

Sir, I approach this subject not without considerable anxiety—an anxiety in no degree arising from any doubt or mistrust which we have in the principles I shall have to avow on behalf of the Government, or of the soundness and adequacy of the measure I have to propose. No—my anxiety arises from a doubt in my own powers to expound those principles, and that measure sufficiently clearly to carry your views along with me; for not only is the subject of itself extremely intricate, but it has been rendered still more so by the great variety of views which have been discussed, and the great diversity of systems and proposals to which those discussions have given rise. But, Sir, it is essential for the success of our measure that we should carry public opinion with us in the soundness of our plans. My only aim, therefore, in now addressing you, will be to lay down those principles, and to explain our measure in a manner to make myself as intelligible as I possibly can to all; and if in so doing, I shall detain you somewhat longer than you could wish, I trust to the great importance of the subject as my excuse.

Sir, we wish to deal with this question in a broad and comprehensive manner, befitting the interests of a great country—in a manner which shall be applicable alike to all parts of India—in a manner which, being sound in principle, we may safely leave to a development as wide as the wants of India can ever require, however great they may be. Sir, we feel it to be a great principle in Government to base our measures with regard to all matters of trade or finance on so sound a footing, that we may safely leave them to their own self-development, according to the unrestrained requirements of the public from time to time, without the constant interference which unsound principles demand from the State to bolster them up. And we feel that, in applying such principles to India, we have at least this advantage, that we have almost what I may term a *tabula rasa* upon which to act. No doubt one of the great difficulties which other Governments have had to deal with in reforming their currency legislation has arisen from a net-work of unsound practices and of existing interests which stood in their way. Fortunately, we can hardly be said to labor under such a difficulty. At the same time, the subject is so novel in India, and I may add the relation of the Government to the people is so peculiar, that I cannot but feel, in order to make our course clear, and the benefits to be derived from our measure intelligible, it will be necessary for us to consider the question from its foundation, and I hope I shall not be thought pedantic if I venture to lay down some of the first axioms as to the nature and character of currency, in order that we may the better judge of the soundness of the superstructure which we shall raise in the shape of a measure proposed for your adoption.

In the first place, then, we shall, I think, be all agreed, that the only legitimate object of currency, in whatever form it exists, is to act as a medium for circulating commodities in a manner infinitely more convenient than any system of barter could effect that object; and that this is best attained by the adoption of one of the precious metals, gold or silver, as the least fluctuating standard to which the values of all other commodities can be referred, and by

which they can be defined. At the same time, it must be plain that, in thus setting aside a large amount of the precious metals for this purpose, we are really abstracting from the common stock of the country so much capital, and devoting it to a purpose which yields no profit or interest, but which nevertheless gives to the remaining common stock of capital so great an increased value, by the additional facilities which are given to exchanges, as fully to compensate for the abstraction of so much capital. Well, then, applying this principle to things as they actually exist in India—how do we stand? The standard which we have adopted is that of silver. Whether it is the best or not, we will consider hereafter. But at least, I must ask you to bear in mind, and never to lose sight of the fact, that from time immemorial the standard of value in India has been one of silver;—that every obligation, public and private, has been contracted in a currency of silver;—and that all such obligations to pay any given number of Rupees at any date however remote, is really nothing more nor less than an obligation to deliver so much silver.

Then let me ask, how much capital has there been abstracted from the common stock in India for this purpose? How much continues abstracted, performing the function I have described, though I fear in a most inconvenient form—indeed, in a form, as I shall show, which leads to further great sacrifices independent of the loss of so much re-productive capital? It may be difficult to form any precise estimate of the amount. But at least, we know enough to come to the conclusion that the amount is very large. Since 1835, I find that the coinage in the three Indian Mints has exceeded a sum of one hundred crores of Rupees, equal to one hundred millions of pounds sterling. But, Sir, this would give but an inadequate idea of the rate at which silver coin is being now absorbed. One hundred millions in twenty-five years give only a general average of four crores of Rupees, or four millions sterling in each year. But what is the magnitude of our transactions now? In the last four years the quantity of silver coined at our Mints, and absorbed in the country, amounts to no less than forty-seven crores of Rupees, or £47,000,000, being at the rate of nearly £12,000,000 in each year. Sir, could we have a stronger proof of the rapid increase of the activity of our trade, and I will add of the wealth necessary to minister to it? Now, I am not unmindful of the fact that all this coin does not remain in circulation—that much of it is, unfortunately for the country and for its owners, hoarded, and that some of it is again melted down for jewellery. But making all due allowance for these abstractions, there must be in actual circulation as coin a sum of money exceeding one hundred millions sterling, or one hundred crores of Rupees, more than the equivalent of the whole debt of India; and it is an important fact that this amount is annually increasing, and must increase, as trade becomes more active, thus abstracting more and more from the re-productive capital of the country.

But, Sir, I have hinted at other ways in which the public in India, and I may add the Government, are exposed to loss through our present monetary system. Our currency consists exclusively, or nearly so, of silver coins, forming a great bulk and weight in proportion to its value. Can any one form a just estimate of the whole cost to which the public are put in transmitting this bulky coin from place to place? Can any

one even judge of the expense the Government alone has incurred on this account? I have seen many estimates on this head. If I mistake not, I have seen an estimate made by Sir Charles Napier, that the protection of Government Treasure, in escort and in other ways, gave employment to something like thirty thousand native troops. But be that as it may, be it exaggerated or not, there is no question that the public of India are put to an enormous annual cost for the mere risk attending the transmission of coin from place to place.

Now, Sir, let us enquire what are the means which the application of Economical Science and Experience have pointed out in far advanced and highly civilised communities, by which this great abstraction of capital from re-productive purposes can be reduced, by which the cost and risk of removing coin in bulk can be obviated, and by which a great and general economy to the State and the public can be effected? No doubt, between nation and nation, this is chiefly done by the well understood and valuable contrivance of Bills of Exchange:—in the domestic transactions of a country, this economy is to some extent effected by Banking operations and transfers, to some extent by Bills of Exchange, but to a much greater extent, and in a far more convenient form, by the use of Bank Notes, of uniform amount, and for such sums as suit the ordinary transactions of life; but so regulated as to represent in reality the coin for which they are used. But before I proceed further, I am desirous of here noticing some proposals that have been made from time to time in India for the purpose of remedying the defects of our monetary system by the introduction of gold coins. Now, Sir, I must say that, having given all the proposals which have been made for this purpose, or that are capable of being made, our most careful consideration, I am unable to recognise in any one of them a reasonable or unobjectionable mode of accomplishing the object. Shall we adopt a double standard of gold and silver? Sir, few will be found to advocate such a plan. No doubt, gold and silver vary in their intrinsic value in relation to each other, much less than perhaps any other two articles that could be named; but, nevertheless, they do vary, and that not inconsiderably as the experience of the last few years has shown. In relation to silver, gold is certainly at least five per cent. cheaper than it was ten years ago; and when we come to treat of national obligations, that may represent a large sum. What effect then would the adoption of a double standard have? Why, clearly to enable the debtor to discharge his obligation in whichever might at the time be the cheapest metal. This, Sir, would destroy the whole object, and the great utility of a standard at all, and would simply enable the debtor to pay in one material what he had contracted to pay in another. Sir, we are not prepared to adopt a measure admittedly so defective and so unsound. But, then, it has been proposed that gold coins should be circulated, and should pass only at their intrinsic value, fluctuating from day to day according to the fluctuations of the price of gold. But, Sir, it would be a mere misnomer to call such coins money. Could the transactions of a country be carried on with coins which to-day might represent 10 Rupees and 8 annas, to-morrow 10 Rupees, and the next day 9 Rupees and 8 annas, and so on? Think of the inconvenience which would arise from such a system, and the

altercations which would ensue between buyer and seller as to what the real intrinsic value was from day to day, or even from hour to hour. Again, think of the dissatisfaction which would naturally be felt by any one who, having received a coin of the Government at one rate to-day, found, when he required to use it to-morrow, that it had fallen in value by 4 or 8 annas. Sir, if there is one duty more than another which the Government owes to the public in respect to its monetary arrangements, it is that the coins, which it circulates with its authority, shall be of one common and unvarying value. But another proposal has been made with a view of obviating the evil of a fluctuating value. It has been proposed that gold coins shall be issued representing 10 Rupees of a certain weight and fineness, and that their value should be fixed by law as a legal tender for a given period of time, say six months or a year, when the exact value should be re-adjusted according to the market value of gold for another period of time. But what would be the practical effect of such a plan? If, after the value was fixed, gold were to rise in price, then there can be no doubt all the gold would disappear from circulation—if, on the other hand, gold were to fall in price, it would become profitable to send gold to the Mint to get it coined, and with it to purchase silver coin at a profit. In such case no doubt a considerable quantity of gold would be forced into circulation. But the day of reckoning would soon come—the time when a re-adjustment of the legal tender value of the coin would take place. A large quantity of coins which had passed as legal tender for 10 Rupees for a certain time would on re-adjustment pass for 9 Rupees 8 annas. Who is to bear the loss! The unfortunate holders at the time the re-adjustment took place. Would this be a satisfactory arrangement? My own belief is that in practice all these schemes to make two metals, which are always less or more varying in price towards each other, circulate in strict uniformity, would entirely fail. It has been tried in Europe under the most favorable circumstances, and has failed there. I have here a monetary convention, which was entered into in 1856, between the Austrian Government and all the other German States, with a view to have one uniform current coin. Every one who has travelled through Germany is aware of the great inconvenience which resulted from the various coins which were in circulation throughout those States. The standard of value in Germany and the current coin are of silver, as is the case in India. But some of the parties to the Treaty, and especially the Government of Austria, were anxious to supplement their silver currency with gold coins, as has been desired in India. The plan for this purpose provided for by the Treaty is similar to that upon which I have just commented—it was provided that gold coins should be issued at a fixed valuation which should remain a legal tender, and current for six months, and should then again be subject to re-adjustment in their current value according to the market price of gold; and so on, a new re-adjustment taking place every six months. The words of the Treaty are:—

Extract from the German Monetary Convention, dated January 24th, 1857.

Article XXI. para. *a.*—That each State is at liberty to allow their gold coins (Article XVIII.) to be taken at their treasuries in lieu of silver, at a rate of exchange to be beforehand decided upon; and this at all treasuries, and for all payments or only partially, as shall be thought

proper. Such pre-decided rate of exchange shall last at the utmost for six months, and at the close of the last month is to be each time re-considered for the next similar period.

Well, Sir, when I saw that propositions of a similar character had been made here, I wrote to Lord Woodhouse, the Under-Secretary of State for Foreign Affairs, and begged that he would ascertain from the Austrian Ministry what had been the practical effect of that provision in the Treaty. I have just received His Lordship's reply. He encloses a communication from Lord Augustus Loftus, our Minister at Vienna, of which the following are extracts:—

Extract from Despatch of Lord A. Loftus, No. 92, dated November 8th, 1859.

The provisions of the convention between Austria and the Zollverien States, affording the faculty of supplementing their legal currency by the addition of gold coinage, have virtually been a dead letter as regards Austria.

* * * * * *

Under these circumstances, the provisions in the monetary convention in question, as far as regards gold, have never been acted on, and very little gold, comparatively, has been coined in Austria, that metal for some years past being little current, and principally confined to the hands of money-dealers and merchants, for the purpose of making payments in foreign parts; it cannot, therefore, be reckoned an active or operative portion of the specie currency of the Empire.

Sir, the experience of Germany is not encouraging for India to rely upon impracticable schemes of this nature for the improvement of our currency. But then another and more extensive change has been suggested, and that from a quarter deserving of every consideration. It has been said—why not change our standard of value?—why not, as in England, adopt a gold standard, supplemented by silver tokens of limited tender as subordinate coins? Sir, if we had now to begin *de novo*, no one will doubt that that would be a much preferable plan to that which we now find in use. But we have to deal with a system already established—a system under which an enormous amount of obligations, both public and private, has been incurred. As I have already said, those obligations in reality are to pay a given quantity of silver. And if we were now to change our standard of value, and to adopt gold in place of silver, because the former is becoming cheaper in relation to the latter, I think no one can doubt that we should by law be enabling every debtor—the State amongst others—to commit a breach of faith upon his creditor. Let us bear in mind, that a reduction in the price of gold of only five per cent. would, under such circumstances, in effect reduce the claim of the holders of the public debt of India by no less a sum than five millions sterling. Sir, we are bent upon reform and economy in every legitimate shape that lies within our reach, but we believe that the credit of the Government will be best sustained by the most rigid observance of good faith in all its transactions.

Then, Sir, however free we are to admit the great inconvenience of the existing system, we are unable to look in the direction of a gold currency for a cure of its defects. But we think we can propose one in every respect more effective for all the objects we have in view, and one which will strictly maintain the integrity of our present standard, and which will not expose us to the suspicion of tampering with the obligations of the State. We have no doubt that all the objects at which both we and the public aim, will be far better and more perfectly accomplished by having recourse to a sound, well-regulated, Paper currency of general application to the

whole of India, and at all times easily and readily convertible into the coin which it represents:—a Paper currency so well secured, that it can safely be made a legal tender in all transactions throughout India. Sir, on all hands, and by all our most accredited authorities on Political Economy, the adoption of a paper circulation so well guarded as always to maintain the full value of the coin it represents, is regarded as one of the highest and most beneficial efforts of political science and civilisation. It enables us to use as an instrument of circulation, in place of the unweildy and costly coins which we do at present, a representation of them which costs little or nothing, but which in every way is infinitely more convenient. In this way it effects a great economy of capital, by releasing the precious metals which are much more imperfectly performing the same purposes. Some writers have compared the adoption of a Paper currency to the discovery in the country of new mines, because you do really add to the effective wealth of the country, to whatever extent paper replaces the coin in circulation. Adam Smith, I think, it is who compares the economy thus effected, to a discovery by which all your locomotion could be conducted without roads, and by which you were enabled therefore to add the existing roads to the portion of the land under re-productive cultivation. The road is an abstraction from the fruitful portion of the soil, but the sacrifice is abundantly compensated for, by the additional value which it gives to the rest; so the precious metals used as a circulating medium, yielding as it does no interest, and being, as I have said, an abstraction from the re-productive capital of the country, the loss of which however, like the land used for roads, is compensated for by the greater value given to the remainder. But, Sir, if we can to a great extent, by the use of paper, effect the same object, then we release that unproductive capital for other purposes, while we confer a greater convenience upon the public. The inconvenience of the present money in use is sufficiently familiar to every one in private life—the inconvenience to those engaged in large transactions, especially out of the Presidency Towns, and where there are no Bank Notes, is still greater. In one of the large Trading Towns in the North-West, I found a remarkable example of this inconvenience. I found that recourse had been had for a circulating medium, in order to save the labor and time of counting large sums in Rupees, to the use of mysterious sealed bags, said to contain a thousand Rupees each. These bags circulate freely in wholesale transactions; upon the faith the merchants have in each other, with a "chit" or letter of indorsement, without always any precise knowledge of what the real contents are. Sir, when recourse is had to expedients of this kind, we have ample proof that some reform in our existing system is loudly called for. But, Sir, independent of the great economy of capital which is thus effected by a Paper currency, there will be a further economy in three other important ways—first, we shall find a great reduction in the cost of the Mint; next, we shall save the wear and tear to which the coin in circulation is exposed, and the great loss which the public incur from light coins; and, lastly, we shall, both as a Government and as a community, save not only great expense but also great risk in the transmission of money from place to place:—we shall be able to adopt the improved plans of civilised nations in place of adhering, as we do to this day, to a practice which had its origin long before the Christian era.

But, Sir, a Paper currency, in order securely to carry out all these advantages, and to be a perfect representation of coin, must be based upon certain well-known and defined principles. In order that the paper shall be identical in value with the coin, it must not only be made convertible in theory and by regulation, but sufficient security must be taken to provide for that convertibility at all times. By this means the quantity of paper in circulation will always be identical in quantity with what it would be were it to continue wholly a metallic circulation. The notes issued would not be an addition to, but a mere substitution of, the silver coins which they displaced. It is, Sir, a Paper currency upon this sound principle which we seek to establish in India—a principle which has stood the test of experience in other countries, where it has been found equal to the magnitude of the largest trading transactions. But in order that a Paper currency shall fulfil all the purposes of coin, it is necessary that it should be a legal tender every where, except at the place of its issue, where it is convertible into coin, and it should moreover be received by the Government in payment of revenue and for all other purposes.

Assuming then, Sir, that I have been fortunate enough to carry the Council thus far with me, it will now become my duty to state in what manner the Government is of opinion a Paper currency, combining all these advantages, can best be carried into effect. And here I propose, for the sake of clearness, to divide our plans into five distinct heads—first, as to the agency through which such notes can best be issued; second, as to the manner in which the necessary securities can best be taken for the conditions which I have laid down as essential to a well regulated Paper currency; third, as to the functions to be entrusted to the issuing body; fourth, as to the denomination of the notes to be issued; and, fifth, as to the securities to be taken against forgery.

In the first place then, Sir, we are to consider what will be the best agency to use for the purpose of circulating a Paper currency. Now, let us bear in mind that the proposal is, and we think that essential, that the notes to be issued are to be a legal tender in all transactions between man and man, that they are to be received at every Government Treasury for all demands of the Government for revenue or other purposes, and that the system is to be general and to extend over the whole of India. It is essential that we should bear these conditions in mind. Well, in point of practice, the issue of paper money has hitherto been usually confined to Banks or to Governments. I may say most usually to Banks, and there is no doubt that in old countries, where the system has long been combined with the institutions of trade, and where the machinery of Banks upon a sound basis exists and is spread all over the country, they possess considerable facilities for exercising this function. But let me here remark that the issue of notes does not necessarily constitute any part of the business of a Banker, who is more properly a dealer in capital: a borrower from one man and a lender to another upon higher terms, which forms his profit: in short, a most useful and beneficial medium, through which the spare capital of one portion of the community is rendered profitable in the hands of another. We can have no better proof of this than the fact that, notwithstanding the great number of Private and Joint Stock Banks in London, none of them (the Bank of England only excepted) do or ever

did issue notes: in Manchester, one of the largest emporiums of trade in the world, not one of the Banks (the Branch of the Bank of England excepted) issues notes; and by the laws of 1844 and 1845, all Banking Companies established after those years within the United Kingdom are distinctly interdicted from issuing notes. We require no further proof that the issue of notes is no necessary part of a Banker's business. But, Sir, there are peculiarities in our position in India, and in the system which, on the part of the Government, I am about to propose, which would render it even more difficult than usual to employ the agency of Banks in India. In the first place, the system is to be universal. How many years should we have to wait before we could expect that any Banks, however extensive their capital, could establish branches throughout the whole country for this purpose? But, again, even though that difficulty were got over, we have still another which I regard as insurmountable. Our notes are to be a legal tender—they are to be received by every private person, as well as by the Government, in discharge of all ordinary claims. To attach this condition to our notes, we must provide absolute and undoubted security for their payment, not only for their ultimate payment, but for their convertibility into coin when required. Well, Sir, if we employed the agency of a Bank, we should require not only a deposit of securities which would ensure the ultimate payment of the notes, but also of a proper reserve of bullion, to secure their prompt and immediate payment. We could not make them a legal tender on any other conditions. Well, but the business of a Bank established upon such a scale, could not be, and it would not be desirable that it should be, confined to the issue of notes. It would extend to all other Banking business. It would hold deposits, it would issue Bills of Exchange, it would discount and negotiate mercantile paper—in short, it would have a great variety of creditors other than those who held its notes. Would it then be practicable, would it be fair towards the great body of its creditors, if so large a share of its assets, as I have said, should be set aside as security for its notes in favor of one class of its creditors, to the possible injury of all other classes? Would it be fair to protect the note-holders at the possible risk of the depositors? Sir, with one exception, to which I will shortly refer, I know of no Bank whose issue of notes are a legal tender: the Banks in Scotland all issue notes, but they are not a legal tender; the notes of the English and Irish Local Banks are not a legal tender; the notes of none of the American Banks are a legal tender; the notes even of the Bank of France are not a legal tender; the Notes of the Bank of England only, and this is the exception to which I referred, are a legal tender, and this exception is defended upon the ground that the Legislature has entirely separated the department for the issue of notes from the department for general Banking business, and that it has provided that, in the Issue department, there shall at all times be retained public securities and bullion to the full amount of the notes which, from time to time, it issues. Now, there may be, and no doubt there is, a question how far this separation of accounts is real or nominal, as it affects the interests of the different classes of creditors; but practically considering the large capital of the Bank of England, upwards of seventeen millions sterling, including the Rest, and con-

sidering the publicity given to all its transactions and its accounts, the question would never arise. But with a new establishment in India it could not but be otherwise. On every ground then, while we wish to see Banking establishments extended, we have come to the conclusion that we cannot avail ourselves of the agency of Banks for a general Indian Paper currency.

But, Sir, if there are special reasons why Banks in India cannot be used for this purpose, there are others as special and peculiar to India, which point to the remarkable facilities possessed by the Government for the issue and management of a paper circulation. Throughout India, in every part, however remote, the Government has an organised body of public officers, of receipt of revenue on the one hand and of expenditure on the other. Indeed, it is not too much to say that the great recipients and disbursers of money throughout the whole of India are the revenue and other officers of the Government. The Government Treasuries may be said practically to represent the great bulk of monetary transactions in most districts. Practically, the transactions of these Treasuries, and the money that is accepted at them, must regulate the transactions of India. Well—but, Sir, we have to use every possible precaution against abuse of the power which the Government would have, if it had an uncontrolled authority to issue notes. If we are to make the notes a legal tender, we must take absolute security not less than that I have described for the safety of those notes. We must take care that, under no circumstance, can the Government abuse the privilege of making paper money, and by over issues for purposes of expenditure endanger their convertibility and thus run the risk of their depreciation. We do not then propose that the Government itself, in any of its existing departments, shall be empowered to issue notes, but that, by the Bill which I shall ask leave to introduce before I sit down, a Commission shall be formed, whose duties shall be strictly defined by law, over whom the Government shall have no power, except within the limits of the Act, and who shall be bound upon oath to obey the provisions of the Act. Sir, in this we aim at no novelty. In this and all our measures we are not ambitious of being regarded as ingenious inventors; we are content to accept the more humble, but by far the safer function of applying, in the most approved manner, to the circumstances of India, those great principles of sound science and its practice, which long years of discussion and experience have proved in advanced countries to be compatible with public interests and public security. Sir, as nearly as possible, we take the Issue department of the Bank of England as our model; but we take it under most favorable circumstances, being stripped of its only objectionable feature—its connexion with the Banking department.

This, then, brings me to the second point. The manner in which security shall be taken for the performance of the conditions which we regard as essential to a paper circulation, which is a legal tender; and, together with this, we may, to save time, consider also the third head, that is, the functions of those who will be entrusted with the issuing of the notes. Sir, for this purpose we propose to divide the three Presidencies into convenient districts, to be called *Currency Circles*. Our object will be so to arrange these circles, that the chief station of one of the existing dis-

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tricts for revenue purposes will be near to its centre. In connexion with the Mint at Calcutta will be the head establishment, where the notes for the whole of India will be made, under the direct superintendence of the Head Commissioner. In connexion with the Mints at Madras and Bombay, there will also be established Commissioners, in whose charge the circulation of those Presidencies will be placed, and who will be supplied with notes from Calcutta. But for the sake of clearness, I will confine my observations now to this Presidency. The local circles having been determined and fixed, the chief station within it, where we should find the principal Treasury of the district, which would also be a Military Station, and at which a considerable European population would be found, such a place for example as Benares or Allahabad, or Lahore, would be fixed upon as the station for the Branch department of Issue, under the control of a Deputy Currency Commissioner. The functions of the Commissioner in Calcutta and of the Deputy Commissioner at the local branches, so far as regards the issue of notes, would be precisely those of the Issue department of the Bank of England. They would receive coin and silver in exchange for notes, and they would always be prepared to pay coin in redemption of the notes of their district. The notes, like those of the Bank of England, would be of similar appearance for all India, but the notes of every Branch would bear upon its face the name of the Branch at which it is issued. All Branch notes will be payable in silver at the Branches from which they are issued, and also in the Presidency Towns to which the Branch belongs, whether Calcutta, Bombay or Madras. The notes will be received into every Treasury in the circle in which they are issued in payment of revenue and of all other claims of Government. But there would be no more connexion between the Government Treasuries and the Issue departments than with private Banks. In the first instance, the Government Treasuries would exchange such part of their silver as they desired for notes: the Issue department would receive the coin, and the Treasuries the notes representing it, for circulation. Bankers and others requiring notes for the purpose of trade would obtain them in exchange for silver; and in the seaports, merchants importing silver would carry it to the Issue department, and at a fixed rate would at once receive notes for the full amount in place of waiting, as they do at present, till it is coined; thus giving them the same advantage that the importer of bullion has in London in carrying his bullion to the Bank of England, and of receiving its own notes in exchange, which are convertible into coin, and can at once be used for all trade purposes. Now, according to this plan, it will be plain that the Issue departments, neither in Calcutta nor in the districts, can ever have in circulation a larger amount of notes than they possess coin to represent; but inasmuch as a larger proportion of the notes thus circulated will remain out, and at any time only a small proportion can ever be presented for payment, each Branch and each chief department of issue will be permitted to invest a portion, in no case exceeding two-thirds, in Government paper, which will be held by the Issue department, specifically appropriated to the payment of the notes, and the remainder, not less than one-third, will be held in bullion, ready to meet the claims of those who wish to exchange their notes for coin. The necessary balance of coin at all the

branches will be kept up, if needful, by supplies from the head departments in the Presidency Towns. The circulation of the Bank of England is usually about twenty-one millions, which is represented by fourteen millions of public securities, and the remainder in bullion. By these means, Sir, we should give to the country all the convenience to be derived from a Paper currency. We should effectually provide at all times for its absolute security and for its instant convertibility. The Issue department would always be possessed of bullion and public securities together to the full extent of the notes issued: be the amount ever so great, the principle would be so sound that no other limit need be placed upon the action of the department. The legitimate demands of trade alone would determine the amount of the circulation, without any interference on the part of the Government to attempt to regulate it. Such a mixed currency of paper and coin would exactly correspond with that which, under present circumstances, would exist, if we continued to circulate coin only, and that, Sir, is on all hands admitted to be the true test of a sound currency. These, Sir, are the functions which the Issue departments will perform, and these the securities which we propose to take for the performance of the conditions which I have described as being essential to a sound Paper currency, and we have no doubt they will be considered as ample for the purpose. And, Sir, it will be obvious that by this means a large profit will accrue to the Government. The Commissioners of the Issue department will receive the dividends due upon the stock which they hold, which they will pay into the public Treasury as the profits of the note circulation:—but the Government will be benefited in another form—it is impossible that so large an amount of public securities can be taken out of the market without raising their price, and proportionately in a most legitimate way improving the credit of the State. The practical effect of these measures will indeed be the redemption of so much of the public debt as shall be thus held by the Commissioners of the Issue department of the Government.

Then, Sir, we have next to consider what ought to be the denomination of the notes so issued? This is a subject upon which much difference exists both in opinion and in practice, and it will be obvious that it can only be properly determined by a reference to the character of the transactions of a nation, whether as a rule they represent very small and minute sums, or whether they represent generally larger sums. In England the lowest denomination of notes is £5; in Scotland and in Ireland it is £1; in France it is 100 francs; in the United States it is one dollar, or about 4*s.* 2*d.*; in some of the North American Colonies one dollar notes freely circulate; throughout Germany the thaler note, of value little more than 3*s.*, is the most common circulation; in Mauritius the circulation consists of notes of 5 Rupees or 10*s.* and upwards; in Ceylon the notes are of 10*s.* and upwards—formerly they were of 5*s.*, and by a report on the subject which I recently received from the able and accomplished Governor of that Colony, Sir Henry Ward, it appears that the suppression of notes of that denomination had been attended with inconvenience to the planters and others, of which complaint had been made. But from what I have already said, it will be apparent that, as a matter of security, it is much more important that the circulation should be based upon a really sound principle, than in any way unduly

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restricted in the denomination of the notes. It must be plain that a principle which makes notes of a large denomination safe and secure must equally extend to those of a lower denomination. And, Sir, there will be a peculiar source of absolute security in respect to the paper circulation of India, which attaches to perhaps no other Bank of Issue in the world. In all other cases with which I am acquainted, notes are issued to the public in the shape of loans, in discount of bills, and as advances in various forms. Now it may be said, and truly, that even if issued for those purposes, they could not remain out in excess of the public requirements so long as they are convertible at the pleasure of the holder into coin. This is a point upon which the great majority of practical authorities may be said to be now agreed. To believe that convertible notes can continue in circulation in excess, is to contend that a note that can be easily and instantly exchanged for coin can be depreciated, because the only proof that I know of an excess of circulation is depreciation of the notes in relation to the coin it represents. Now no one I think will contend that any man having a note in his possession which did not command the same exchangeable value as the coin it represents, and having it in his power to exchange that note for the coin, would fail to correct the anomaly by that means. But there have been those who have thought differently, and even to those I would say, that the issue of notes upon the principle we propose cannot possibly be attended with any such risk. Sir, our notes will be purely bullion notes, they will be issued only in exchange for bullion: there will be no issues as credit advances in any shape whatever. That is the legitimate business of Banks. It is ours to furnish a circulating medium—it is theirs to use it in all the variety of forms which credit transactions assume. In our case we are absolutely restricted, and by force of a great and obvious principle we maintain intact the full intrinsic value of the currency—in theirs, they are governed by the ordinary principles which govern all commercial transactions. Well, Sir, these are not unimportant considerations, when we are determining the denomination of the notes to be issued. But the main consideration, after we have determined upon a sound self-acting principle, is the character of the transactions of the country and the denominations of the coin in use. It is the imperative duty, it is the interest of a Government, to furnish a circulating medium for exchanges determined in amount by the wants of the community. Well, the great characteristic of Indian transactions is their number and their multiplicity. And, then, if we bear in mind that the highest denomination of coin in circulation is one of only a single Rupee or two shillings, while in England the common coin is one of twenty shillings, it would appear that we should be justified in adopting the old practice in Ceylon and the present practice in many countries, and adopt notes of a denomination as low as two or two and a half Rupees. But, Sir, we do not propose to go so low—we propose to begin with five Rupees or ten shillings, adopting the limit at this time actually in practice in Ceylon and Mauritius; and beginning with that denomination, to have others of *ten*, *twenty*, *fifty*, *one hundred*, *five hundred*, and *one thousand* Rupees, which latter I hope will take the place of the mysterious sealed bags which circulate at Mirzapore.

Sir, we think it is essential to the plan to have notes of a small

denomination, in order to furnish change for the notes of larger amount, which will be extensively used as an easy mode of remittance from one part of a district to another. As I have said before, these notes will be payable in coin at the central offices of the district from whence they are issued, and they will be all payable as well in Calcutta, Bombay, or Madras, as the case may be. They will be receivable in every Government Treasury within the circle in payment of revenue or any other claims of the Government whatever. And I cannot help believing that such a system of currency will prove of an immense convenience, compared with the present cumbrous system of conducting all our transactions, however large, in two-shilling silver pieces.

Well, then, Sir, the fifth and last head is, what precautions we are prepared to take against forgery? and I think we shall be able to satisfy you that we have not only not been unmindful of that important point, but that we have already taken measures, and that successfully, which will give us every security that it is possible to attain on this head. But here I would remark upon a point which I think has been too much overlooked in connexion with the relative risk which exists between a currency of coin and one of paper. We must bear in mind that coin can be counterfeited while notes can be forged. Two years ago, I moved for a return in Parliament of the number of prosecutions which ~~had~~ taken place in England, Scotland, and Ireland, during the ten preceding years, in connexion with the making and uttering of base coin, and in connexion with the forging and uttering of forged notes. I hold that return in my hand. The result is that in England and Wales, during the ten years, the cases of prosecution in relation to coins numbered no fewer then 6,291, while the number of prosecutions in connexion with forged notes were only 1,866. Again, in Scotland, and here, let it be borne in mind that the denomination of the notes in circulation is as low as *one pound*, and where the circulation consists almost exclusively of paper, the number of cases of prosecution in connexion with base coin was 570, while the number in connexion with forged notes was only 4. Again, in Ireland, where the lower denomination of notes also prevail, the number of cases of prosecution in connexion with coinage was 338, while in connexion with forged notes they were only 41. In the whole of the United Kingdom, the prosecutions in relation to base coins were 7,199 for the ten years, while those in connexion with forged notes were only 1,911. I think these returns conclusively show that the risk of counterfeit which attends any system of currency is by no means confined to Bank Notes. I believe I am right in saying that the attempts at counterfeiting coins in India are very rare and that prosecutions in relation to such crimes are not of frequent occurrence. No doubt the complicated machinery required for coining, and the great cost and skill necessary to make it, and the rareness of skilled artificers to work it, may be said to be one of the reasons why this class of crimes does not prevail in India —for we must bear in mind that it requires a large outlay of capital, and a large employment of the most ingenious skill (which so much abounds in England), to manufacture even counterfeit coins. But, Sir, if this difficulty has hitherto shielded the Indian public from the dangers of a base coinage, I think I shall be able to show that the steps we have taken will be even more perfect for shielding it from the evils of forged

notes. Sir, we know well how expert some of the people in the East are in imitating hand-writing. I have heard of a case in which one of your predecessors, Sir—a former Chief Justice of Calcutta—was deceived on the Bench by the production of a document purporting to bear his own signature, and which turned out to be forged. We all know, too, the number of forged documents which are used in our Courts of law—an evil so common, that the Honorable Member for Madras has submitted to us a Bill, the avowed object of which is to check these proceedings. But be it observed that all these attempts are made in connexion with the hand-writing. I have not heard of a case where an attempt has been made to forge the stamp to a document. Sir, our precautions will consist altogether of those of a mechanical character, embracing the use of machinery and scientific operations of the most refined character, but at the same time plain and palpable to the eye of the commonest observer. Sir, as soon as I had accepted Her Majesty's gracious appointment to the responsible office I now fill, my attention was at once turned to this most obvious reform in our Indian administration. I immediately put myself in communication with the Governor and Deputy Governor of the Bank of England, and the able and intelligent mechanical officers who have the sole management of the manufacture of the notes. And, Sir, on the part of the Government of India, I must here tender to those distinguished functionaries, and to their accomplished officers, our best thanks for the very effective aid which, as I shall immediately show you, they already have, and are prepared still further to extend to us in this very important matter. Sir, it is no slight advantage in starting a new career in a matter of this important kind, to have behind us the aid and support of an experience in the most civilised country in the world of nearly two centuries. If there is one thing more than another with regard to which the British Parliament has, at all times, been ungrudging, it has been in extending to trade all the legitimate protection against fraud within its power; and to the Bank of England, as being the chief issuer of paper money, it has extended every possible security against forgery. It has, by law, given to that corporation the sole right to use paper manufactured in a particular way, and to use printing of a particular kind. But it is not so much on legal restrictions of this kind that the Bank of England relies. It is not upon the writing or printing of notes, for after the experience of many years, it has become a settled principle in the Bank of England, that the plainest and simplest form of notes is the one in which forgery is most easily detected, and that elaborate notes are most easily imitated. What the Bank of England chiefly relies upon for its protection is the paper which it uses, and the water-marks with which the paper is made. The paper is only made by one house, which is bound to supply the Bank of England alone, and admit no stranger to enter the premises. Well, Sir, whatever advantages the Bank of England enjoys under Acts of Parliament, or in the exclusive manufacture of paper, or in the monopoly of those water-marks, the Directors have generously consented to extend to the Government of India. They have gone further, and pending our preparations in India, they have consented to make notes for us. Sir, I hold in my hand a specimen note for ten Rupees, which I received from the Governor of the Bank by a recent Mail: the paper

of which contains water-marks similar to the notes of the Bank of England, with the variation only of the words. This specimen has in the water-mark the words "Government of India" along the top of the paper. The word "Ten" in the centre, and the word "Rupees" below. Sir, that which the mechanical skill of England has proved unable successfully to imitate, we may rest satisfied will be secured from counterfeit in India; and the great advantage here is that the water-mark, as a test of a genuine note, is plain and visible to the eye of the most unlettered person. As a proof of the great perfection which the system has reached in the Bank of England, I may mention a very striking fact. It will have been observed that each Bank of England note has inscribed a number with two capital letters attached. If that number, with the two letters, were cut out of a note and all the rest of it destroyed, so perfect is the system, that on presenting that small remnant of the note, the Bank would be able to say whether the note had been paid or not, what the amount of the note was, and the date and place of its issue:—and upon this relict alone they would be content to pay the note, of course taking security that the remainder would not be presented. Sir, it is with all the advantages of a system so perfected, and with the hearty aid and co-operation of the Directors of the Bank of England, that we shall introduce the system of a Paper currency into India. I may here add that the denomination of each note will appear on the face of it, not only in English, but also in the two languages most in use by different classes in the districts where they will circulate. In addition to these securities, the Bill which I now ask to introduce will contain provisions similar to those of the English law, for the punishment of those who may attempt fraudulent imitations.

Sir, I have now, I fear at much too great a length, but it was needful that I should make myself clear upon a subject with respect to which any misapprehension might prove very prejudicial, explained the broad outlines of our measure: we propose to have a paper note circulation of denominations, varying from five Rupees up to one thousand Rupees, to be issued at the Presidency Towns and at the centres of circles or districts mapped out for this purpose; that they shall be payable in coin at the centre where they are issued, and in the Presidency Towns to which the circle belongs; that they shall be receivable by the Government for all claims of whatever kind; that they shall be a legal tender between man and man in the settlement of every claim; that they shall be issued only in exchange for coin or bullion; that a certain fixed proportion of bullion and coin shall always be kept in hand to secure the convertibility of the notes; and that public securities shall be held in the Issue department for the full amount of the difference.

But, Sir, there is one very important point to which I must now refer. We have at the present time three Banking Corporations in India, in each of which the Government may be said to be a partner. The Government holds shares in each, and is fully represented in the Direction. Those corporations issue notes, but they are not a legal tender, nor do they circulate much beyond the Presidency Towns, nor are they received without limit into the Government Treasuries. Now, Sir, even if it were desirable, it must be plain that such notes could not circulate along with the Government notes, which I have

described as a legal tender. The Charter, under which these respectable Banks exist, are subject to revision at any time on twelve months' notice being given. It must be plain that such a system, as I have very inadequately attempted to describe, should be general and universal over India to secure all the advantages which it is calculated to confer. Sir, then, we have decided to give the necessary notice to enable us to modify those Charters. But I must here say that the Government feel that those Banks have conferred a great benefit upon India, and that they will deserve every consideration, consistent with the public interest, at our hands, and I trust that we may fall upon some plan, which, without involving any sacrifice on the part of the public, may compensate, at least in some degree, those Banks for the privilege which they have so long enjoyed, and which I have never heard them accused of abusing. Sir, I think we shall find, when we come to look at those Charters, that they unnecessarily restrict their operations, and that we may also find that we may confer upon them new functions equally for the benefit of themselves and the State. In conferring advantages upon the public, it is our desire to deal as tenderly with private interest as is consistent with the great objects we have in view.

Sir, in the early part of my observations, I referred to the fact that the precious metals, to whatever extent they are employed for the mere purpose of coin in circulation, are really an abstraction to that extent from the real re-productive capital of the country, and I wish now to show in what way the measure which we propose will operate in restoring this capital to re-productive channels. Independent of all the advantages which will accrue to the country by the adoption of a sound Paper currency, that which I am about to describe is most important—if not the most important of all, however less apparent it may be at first sight. I have already shown you by what process the Government would become possessed of a large share of the securities representing the debt of the State, by employing a portion of this coin, withdrawn from circulation and re-placed by notes, in the purchase of such securities. But, Sir, it will be plain, that to whatever extent the Currency Commissioners become purchasers of public stock, there must be sellers to the same extent, to whom the surplus coin would be paid. Those persons would not permit their capital, so relieved from one investment, to remain idle, but would naturally seek other profitable modes of using it. To this extent capital would be more abundant, competition for its employment would be greater, and the tendency would be, to use a familiar phrase, for money to become cheaper. No doubt the first tendency would also be for silver to fall in price as it became released from the circulation, the first effect of which would be to lead to its exportation to any country where the merchant found it would yield a profit, and by this operation the equilibrium of value would be instantly restored. In short, to abstract so much coin from the mere mechanical purpose of the circulation, supplying its place with convertible paper, would be exactly the same in effect, as if suddenly, in the centre of the Midan, a rich silver mine had been discovered, and which produced silver at little or no cost. The first operation would be to lead to an export of that silver in exchange for articles of various descriptions

which were really in demand, and by which means to the full extent the real wealth of the country and the aggregate amount of its re-productive capital would be increased. Mr. Ricardo, in his able pamphlet upon "The High Price of Bullion," published in 1811, has so admirably illustrated this point, that I trust you will permit me to read an extract from it:—

Extract from the works of D. Ricardo, Esq., "The High Price of Bullion," page 264.

If a mine of gold were discovered in either of these countries, the currency of that country would be lowered in value, in consequence of the increased quantity of the precious metals brought into circulation, and would therefore no longer be of the same value as that of other countries. Gold and silver, whether in coin or in bullion, obeying the law which regulates all other commodities, would immediately become articles of exportation; they would leave the country where they were cheap, for those countries where they were dear, and would continue to do so as long as the mine should prove productive, and till the proportion existing between capital and money in each country before the discovery of the mine were again established, and gold and silver restored every where to one value. In return for the gold exported, commodities would be imported; and though what is usually termed the balance of trade would be against the country exporting money or bullion, it would be evident that she was carrying on a most advantageous trade, exporting that which was in no way useful to her, for commodities which might be employed in the extension of her manufactures, and the increase of her wealth.

If, instead of a mine being discovered in any country, a Bank were established, such as the Bank of England, with the power of issuing its notes for a circulating medium, after a large amount had been issued either by way of loans to merchants, or by advances to Government, thereby adding considerably to the sum of the currency. The same effect would follow as in the case of the mine. The circulating medium would be lowered in value, and goods would experience a proportionate rise. The equilibrium between that and other nations would only be restored by the exportation of part of the coin.

The establishment of the Bank, and the consequent issue of its notes, as well as the discovery of the mine, operate as an inducement to the exportation either of bullion, or of coin, and are beneficial only in as far as that object may be accomplished. The Bank substitutes a currency of no value for one most costly, and enables us to turn the precious metals (which, though a very necessary part of our capital, yield no revenue) into a capital which will yield one. Dr. A. Smith compares the advantages attending the establishment of a Bank to those which would be obtained by converting our highways into pastures and corn-fields, and procuring a road through the air. The highways, like the coin, are highly useful, but neither yield any revenue. Some people might be alarmed at the specie leaving the country, and might consider that as a disadvantageous trade which required us to part with it; indeed, the law so considers it by its enactments against the exportation of specie; but a very little reflection will convince us that it is our choice, and not our necessity, that sends it abroad, and that it is highly beneficial to us to exchange that commodity which is superfluous, for others which may be made productive. The exportation of the specie may, at all times, be safely left to the discretion of individuals; it will not be exported more than any other commodity, unless its exportation should be advantageous to the country. If it be advantageous to export it, no laws can effectually prevent its exportation. Happily, in this case, as well as in most others in commerce where there is free competition, the interests of the individual and that of the community are never at variance.

Sir, it is by this process that the capital, which is now unprofitably employed in this country to a great, and I will add so rapidly an increasing extent, will be by the most legitimate means released and restored to the channel of re-productive uses. I may be asked, to what extent we expect by this means to economise capital? Sir, that is a point upon which I am not prepared to hazard a speculation; but if we take into account the fact that, in the last twenty-four years, silver, to the extent of one hundred crores of Rupees, or one hundred millions of pounds sterling, has been

coined, and that the demand for coin has increased so rapidly, that in the last four years, silver, at the rate of nearly twelve crores of Rupees, or twelve millions of pound sterling, has annually been coined, we must arrive at the conclusion that ultimately the amount will be very large. No doubt the introduction of the system must be slow and gradual at first:—the time required to establish the necessary machinery and appliances will lead to this:—but I regard this limit upon our efforts rather as an advantage than otherwise, because it will afford time for people to become familiar with the system, before it assumes large dimensions. Our attention will be first directed to the Presidency Towns, from which the system will be gradually extended into the Mofussil, until it has permeated over the whole of India.

Before I conclude, there are three subjects of a somewhat kindred character to which I would wish shortly to refer. The first has reference to a question which has been much discussed by capitalists in England, as well as in India. I refer to the proposals which have been made for the purpose of establishing, upon a large scale, and with an adequate capital, a national Banking establishment, capable of gradually embracing the great Banking operations in India, and of extending its Branches to the interior trading cities, as opportunity might offer. That there is a growing want for such an institution, and a rapidly increasing field for its operations, no one can doubt. The Government is, therefore, desirous to be understood that the plan which has been adopted for the introduction of a legal tender paper currency, is not intended in any way to discourage, or to interfere with such a project, the operations of which would be those of legitimate Banking transactions in India, and exchange operations abroad. The second is the subject of economising our cash balances, and the great cost to which we are now put by retaining all our cash in our own Treasuries, and disbursing every payment in hard coin. This system has been abolished in England for more than half a century, and the far more convenient and economical form of a Bank account has been resorted to. Sir, this subject engages the earnest attention of the Government. The third and last point to which I wish to allude is the extremely defective condition of our copper coinage. During my journey up the country, there was no complaint which was so common amongst the lower classes than the sacrifice they had to submit in the native bazars in getting copper change, absolutely needful for their scale of expenditure. It is not too much to say that the poorest of the people have been taxed as much as five, and in some cases ten per cent. upon their little incomes from this cause. Sir, I hope we shall take care, in future, to provide against this evil. A large importation of copper coin, to the extent of ten lakhs of Rupees, has been ordered from England: a new mint for copper coin alone may shortly be expected at this place, and another is ordered for Bombay: and we trust that the well-founded complaints on this head will soon cease to exist.

Sir, I have now laid before you the plan which the Government has devised as the best adapted for India, for conferring upon it the great advantages of a perfect system of currency. As I said before, we have aimed at no novelty:—our effort has been to adapt to our own circumstances principles which the wisdom of great men has defined and laid down with philosophical accuracy and practice, which the experience of the most enlightened commercial countries has approved. Sir, these are subjects which have

engaged the attention of intellects of the highest order in modern times:—Newton and Locke and Adam Smith applied their most profound researches to these subjects:—in this present century, they have perhaps more than any other branch of political science, absorbed the attention of able and acute minds—eminent men like Hormer, Huskisson, Lord Liverpool, Ricardo, Tooke, Sir Robert Peel, Lord Overstone, and Norman, have brought to this important subject the greatest power of mind and the largest experience; then we have had Parliamentary Committees almost without number; we had the Bullion Committee in 1811; the Committee on the Resumption of Cash Payments in 1819, presided over by Sir Robert Peel; then we had the Committee on the Bank Charter in 1831; next the Committee on Banks of Issue in 1840 and 1841, presided over in a most able manner by the present Secretary of State for India, Sir Charles Wood; then we had the Commercial Distress Committee of 1848; then the Bank Charter Committee of 1857; and lastly, the Committee of 1858—of the three last of which I had the advantage of being a member. Well Sir, it is upon accumulated evidence such as this, that we feel we may, with confidence, proceed: it is to such accumulated and high authority, as I have recounted, that we feel we may safely defer. And in doing so, there is this great advantage, that, however diversified the authorities I have quoted may be, however much some of them may have differed upon minor points, yet upon that which I have laid down as the great cardinal rule to be observed, all are agreed: among all there is but one opinion, that, in order to constitute a sound currency of mixed coin and paper, there are three great essential conditions:—*first*, that you should have one single standard of value, whether it be gold or silver; *second*, that the paper shall be at all times convertible into the coin it represents; and, *thirdly*, that a sufficient reserve of bullion shall be maintained, in order to provide for that convertibility. Sir, all are agreed in regarding these three conditions as the sheet anchor of a sound currency; and it is upon these conditions, that the measure I am about to introduce has been carefully framed. We know, Sir, that nothing that lies in our power can altogether prevent the recurrence of vicissitudes in trade, but we believe that sound and wise laws will, at least, moderate the severity of otherwise unavoidable misfortunes, while bad laws would infallibly aggravate them. Sir, we have done our best in adapting these great principles to the peculiar circumstances of this country, and now it will become our first duty to give practical effect to the measures which we propose, by the gradual extension to the whole of India of the system I have described, in the confident belief that it will confer advantages of no slight description, and will tend to promote the happiness of India by adding to its material prosperity and wealth.

Mr. Wilson concluded by moving the first reading of a Bill for the introduction of a system of Paper Currency.

SIR BARTLE FRERE seconded the Motion, which was then put and carried, and the Bill read a first time.

ELECTRIC TELEGRAPHS

MR. LEGEYT moved that the Bill "for regulating the establishment and management of Electric Telegraphs in India" be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

RAILWAY CONTRACTORS AND WORKMEN.

Mr. LeGEYT moved that the Bill "to make provision for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers" be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

CUSTOMS DUTIES.

Mr. WILSON moved for a suspension of the Standing Orders to enable him to proceed with the Bill "to amend Act VII of 1859 (to alter the Duties of Customs on goods imported or exported by Sea)."

Sir BARTLE FRERE seconded the Motion, which was put and carried.

Mr. WILSON then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Mr. WILSON said, he would explain to the Council his reasons for the amendments which he intended to propose The first was a Clause which was intended to provide for cases in which questions might arise in respect to contracts for the delivery of cotton twist or yarn duty-paid. The next was a Clause providing for an appeal in the event of any disputes as to the construction of the Act, &c. The third was a Clause which arose out of a legal doubt, of which the Honorable and learned Chairman was doubtless cognizant, namely, as to whether goods in bond were subject to any new duty. He always thought that goods in bond were, in point of fact, as if still on foreign ground. But last year, when the duties were raised on importations, the Government yielded to a representation from the Merchants, and remitted the increased duty on goods in bond. He, however, thought that it was quite obvious that, if goods were bonded, and if the duties were changed whilst the goods remained in bond, the goods should be treated as new importations. In the present case, he did not think that any question of the kind would arise; but as doubts had been raised last year, it was considered advisable to put the question at rest. A Clause was therefore proposed to be introduced, the effect of which was that goods in bond should be treated as if they were new importations. The only other alterations were as to seeds imported by any public society for gratuitous distribution, which it was proposed should be allowed to go free of duty; and in like manner, agricultural implements and machinery of all kinds. Now, he thought, that machinery was of so great importance to the country, that we should not impose any restriction in its importation. He also proposed to include in the free import list conveyances and carriages of every description. This was the practice in almost every country. In England all restrictive laws with respect to the importation of conveyances had been long ago repealed, and it was now proposed to do the same thing in this country. Not that there was any prospect of large importations of conveyances into India, on account of their bulk and weight. They were most usually sent out as specimens or models, and it was very desirable that the Indian artisans should have the newest and best models for imitation. These were the motives which had actuated the English Parliament to admit them free of import duty, and which he thought should influence us to do so now. It was also proposed to abolish the import duty on Military and other regulation uniforms and accoutrements imported for private use by persons in the public service, as well as guano and manures of all kinds. He believed that the first cargo of guano ever brought to Bengal was now in the river Hooghly. He anticipated great benefit from the application of this and other manures in our cultivation of sugar and in the improvement of other products. Those whom he had the honor to address were probably aware of the benefit that Ceylon and the Mauritius had derived from guano in the increase of their sugar crops, and the same was true with respect to the

cultivation of tea in Java. He thought, therefore, that every possible facility should be afforded in the importation of such articles. *Lastly*, he proposed the insertion of the words "and skins" between the words "hides" and "raw" in the free import and export lists in Schedules A and B. Those were the only alterations which he proposed to move.

Section I (which enacted that from and after the 18th February 1860, in lieu of the Customs Duties chargeable under Act VII of 1859, the duties prescribed in Schedules A and B annexed to the proposed Act, should be levied and collected, &c.,) was passed after the substitution of "Acts VII and XXIII of 1859" for "Act VII of 1859," on the Motion of Mr. Forbes.

MR. WILSON moved the introduction of the following new Section :—

"In case it shall be proved to the satisfaction of the Collector of Customs Duties that, in respect to any cotton twist or yarn which, on the said 18th day of February, had arrived in any Port in British India, but upon which the duty of Customs had not been paid, or which had, on or before that date, been shipped on board any vessel in a Foreign Port, and which had sailed for a Port in British India, the said cotton twist or yarn had, before the said 18th day of February been sold or contracted to be delivered at a price including the duty payable in India, then, in every such case, such cotton twist or yarn shall be admitted at a duty of five per centum upon the value thereof."

MR. HARINGTON said, he thought that some provision was necessary like that contained in the English Act, which declared that, whenever a decrease by law took place in the duties of Customs chargeable upon any goods, after the making of any contract or agreement for the sale or delivery of such goods duty-paid, it should be lawful for the purchaser, in case the decrease took effect before the clearance and delivery from the warehouse at the decreased duty, to deduct so much money from the contract-price as would be equivalent to the decrease of duty. Supposing a person had entered into a contract before the present Bill was proposed, to take at a price agreed upon a certain quantity of piece-goods, on which the decreased duty was chargeable under the Bill as it now stood, he would still be liable to pay the same price as though no decrease in the rate of duty had taken place. It appeared, however, to him (Mr. Harington) that the purchaser should have the benefit of the reduction of duty, not the seller of the goods. The English law proceeded upon this principle.

MR. WILSON said, such a provision as that proposed would form no part of the present Section, but would rather come in as a new Section, if it were required at all. For his own part, he did not think that any case of the kind would arise.

The Section was then put and carried.

MR. WILSON moved the introduction of the following new Section :—

"If any dispute shall arise in respect to the construction of this Act, or of any Act relating to Customs Duties, or in respect to any other matter whatever, relating to the importation or exportation of goods or merchandise, or relating to the levy or collection of the duties thereon, the Collector or other Chief Revenue Authority of the Port at which the same may take place shall settle the same, subject, however, to an appeal to the Government of India in the Revenue Department."

SIR CHARLES JACKSON said, he wished to ask the Right Honorable Gentleman whether it was the intention of this Section, by giving the appeal in all cases to the Government of India in the Revenue Department, to exclude the local Governments.

MR. WILSON said, it was the intention of the Section to restrict the appeal to the Government of India, the object of the restriction being to secure uniformity of practice.

After some discussion as to the intention of the words "Chief Revenue Authority"—

THE CHAIRMAN moved the insertion of the words "in a matter concerning the Revenue" after the word "If" in the beginning of the Section, so as not to exclude the jurisdiction of the Supreme Court in cases of dispute involving litigation, which would more properly come under their cognizance.

The Motion was carried, and the Section as amended agreed to

Mr. WILSON moved the introduction of the following new Section :—

"Whereas doubts have existed as to the conditions upon which goods or merchandise are bonded in any Port of India, in respect to the liability of such goods or merchandise to be charged with any new rate of duty that may be imposed, while yet such goods or merchandise remain in bond, be it enacted that all goods and merchandise being bonded in any Port in India shall, in the event of any change of duties taking place, be considered in every respect in relation thereto as if they were new importations."

After some conversation the Section was carried.

Mr. HARINGTON moved the introduction of the following new Section :—

"In the event of any decrease by law in the Duties of Customs chargeable upon any goods or commodities, after the making of any contract or agreement for the sale or delivery of such goods duty-paid, it shall be lawful for the purchaser, under any such contract or agreement, in case such decrease shall take effect before the clearance and delivery from the warehouse at such decreased duty, to deduct so much money from the contract price as will be equivalent to such decrease of duty, and he shall not be liable to pay or be sued for in respect of such deduction."

Mr. WILSON said that the Section proposed would be a very proper Clause in a general law. He might mention that a general alteration and consolidation of the Customs laws was now under consideration, and that in the Bill for this purpose the proposed Section would be better included.

Mr. HARINGTON then, with the permission of the Council, withdrew his Motion.

The Schedules were passed with the amendments referred to by Mr. Wilson; and the Preamble and Title having been passed as they stood, the Bill was reported.

Mr. WILSON then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

ELECTRIC TELEGRAPHS.

Mr. LeGEYT moved that Sir Bartle Frere be requested to take the Bill "for regulating the establishment and management of Electric Telegraphs in India" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

CUSTOM DUTIES.

Mr. WILSON moved that Sir Bartle Frere be requested to take the Bill "to amend Act VII of 1859 (to alter the Duties of Customs on goods imported or exported by Sea)" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

RAILWAY CONTRACTORS AND WORKMEN.

Mr. LeGEYT moved that Sir Bartle Frere be requested to take the Bill "to make provision for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

FINANCES OF INDIA.

Mr. FORBES said, he had given notice to the Right Honorable Gentleman of two questions which he wished to be allowed to ask him in connection with the financial statement which he made to the Council last Saturday week. The Right Honorable Gentleman then gave notice that, among other new taxes which the Government intended to propose, there was one that would assume the shape of a license on trades and professions. The Council was no doubt aware that there was already a tax on trades and professions in the Madras Presidency, which yielded about eleven lakhs of Rupees a year; and as the Right Honorable Gentleman did not take this sum into his calculations of the probable decrease in next year's receipts, it was not quite clear whether

he proposed that the laws under which the taxes which he (Mr. Forbes) had referred to were now collected, would be repealed on the introduction of the new Bill. He (Mr Forbes) thought that the doubt ought to be at once cleared up.

Then, although the Right Honorable Gentleman expressed in distinct terms the views of the Government regarding the liability to the proposed income tax of holders under the Permanent Settlement, and of holders of public securities, he did not, he (Mr. Forbes) thought, make any reference to holders of lakhiraj lands; and as a settlement of the much vexed question of Enams was now in progress in Madras, it was important that this question also should not be left in doubt.

He would therefore ask the Right Honorable Gentleman if, on introducing his proposed Bill for licensing trades and professions, it was his intention to propose the repeal of Regulations IV. 1818 and V. 1832 of the Madras Code, under which a trade and profession tax was at present collected—and if he proposed that the Income Tax Bill of which he had given notice should apply to holders of rent-free and partially rent-free lands, as well as to holders of other real property?

MR. WILSON said, before answering the questions just put to him, he would thank his Honorable friend for this courtesy in having given him due notice of his intention to propose them. In the first place, he felt no hesitation in stating that he did not take into account any deduction consequent on the repeal of the Mohturfa Tax, and for this reason, that, in introducing and explaining the measures of the Government, he had not ventured upon any calculation as to the probable receipt, and therefore he did not allude to the deduction of this item. But, undoubtedly, it was the intention of the Government, in introducing a Licensing Tax, to repeal the Mohturfa and all similar taxes, so that both in system and amount there might be but one tax of equal incidence in all parts of India; and therefore the Bill would contain a clause for the repeal of the tax in question.

With regard to the second question put by his Honorable friend, there could be no question that no land-owners, of whatever description, would be entitled to exemption from the Income Tax. The holders of Enams or rent-free estates, he believed, generally held such possessions as an acknowledgment of public services rendered by them to the State, but that was no good reason why they should be exempted from any general tax like the Income Tax. For instance, in England, the Duke of Marlborough and the Duke of Wellington possessed large free-hold estates, which were assigned to their predecessors on account of the eminent public services which they had rendered; but no one dreamed for a moment that these estates should be exempted from a general tax. Shortly after his arrival in India, his attention was drawn to the subject of the Enam settlements going on in Madras; and to prevent any difficulty from arising hereafter, he wrote to His Excellency the Governor of Madras, pointing out the advisableness, in making these settlements, of the precaution being taken to make it quite clear that the settlements in question would not interfere with any future general tax. In reply, he had received a letter from His Excellency the Governor, from which he would read the following extract:—

"Our proceedings in reference to Enams have been so shaped that there would be no pretence for claiming exemption from any general tax. We have had this clearly in view in all our dealings with the lands in this Presidency, whether they concerned the settlement of Enams, the creation of free-holds, or the revision of local revenues."

It would be seen, therefore, that, in regard to the settlement of these Enams and all other free-hold estates, as well as of ordinary revenue holdings, there could be no question as to their exemption.

The Council adjourned.

Saturday, March 10, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon. J. Wilson,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
H. B. Harington, Esq.,	A. Sconce, Esq.

KING OF OUDE.

THE CLERK presented to the Council a Petition from certain residents and land-owners of Garden Reach and its vicinity, against the passing of the Bill "to provide for the execution of processes within the precincts of the residence of His Majesty the King of Oude."

SIR CHARLES JACKSON moved that the above Petition be printed.

MR. HARINGTON said, as he was about to present the Report of the Select Committee on the Bill to which the Petition just read to the Council related, he wished, before the Motion to print the Petition was put, to make a few remarks on the subject of its contents. From a perusal of the Petition, which the learned Clerk of the Council had been good enough to allow him to see, he was led to think that the Petitioners had not rightly understood the object and scope of the Bill to which they objected. The Section of the Bill which related to the service of Criminal Process was in its character permissive only, not imperative. It would rest with the Court issuing the process to determine whether the process should be served through one of its own Officers, or whether it should be sent to the Agent with the King of Oude for the purpose of being served. Neither this Section, nort he Section which related to the service of Civil Process, was intended to exempt the King of Oude, or any of the numerous followers and attendants of His Majesty, from the ordinary processes of the established Courts of Civil and Criminal Judicature. The object of the Bill was to facilitate the service of these processes; and so far from the Bill being calculated to throw any obstacles in the way of the administration of justice, or to operate injuriously as regards the interests of the Petitioners, he must repeat what he had stated when he introduced the Bill, that he fully believed that in practice the effect of the Bill would be exactly the reverse. It seemed to him that what the Petitioners intended to complain of was the residence of the King of Oude in their immediate vicinity, and that what they really wanted was to get rid of what they evidently regarded as a great nuisance. But whatever grounds of complaint the Petitioners might have on this score, it must be unnecessary for him to say that this was a matter with which the Bill did not profess to deal. He would only add that neither the Government of Bengal nor the local authorities had objected to the Bill, and he must say that he did not think that there was any force in the objections taken to it by the Petitioners.

The Motion was then put and carried.

CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received a communication from the Government of the North-Western Provinces, concerning the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

MR. HARINGTON moved that the above communication be printed.

Agreed to.

DIVORCE (NATIVE CHRISTIANS).

THE CLERK also reported to the Council that he had received, by transfer from the Home Department, a further communication from the Bombay Government on the subject of a Law of Divorce for the Native Christian Community.

EMIGRATION TO MAURITIUS, &c.

THE VICE-PRESIDENT presented the Report of the Select Committee on the Bill "to amend the law relating to the Emigration of Native Inhabitants of India to the Island of Mauritius and other places."

EMIGRATION TO ST. VINCENT.

THE VICE-PRESIDENT also presented the Report of the Select

Committee on the Bill "relating to the Emigration of Native laborers to the British Colony of St. Vincent."

BILLS OF EXCHANGE, &c.

MR. HARINGTON presented the Report of the Select Committee on the Bill "for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as Holidays."

ZILLAH COURT OF FURRUCKABAD.

MR. HARINGTON also presented the Report of the Select Committee on the Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of Furruckabad.

TOLLS (CIRCULAR AND EASTERN CANALS).

MR. SCONCE presented the Report of the Select Committee on the Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on Boats, Rafts, and Floats passing through the Circular and Eastern Canals)."

KING OF OUDE.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to provide for the execution of processes within the precincts of the residence of His Majesty the King of Oude."

TRANSPORTATION OF CONVICTS.

MR. HARINGTON moved the second reading of the Bill "relating to the Transportation of Convicts."

The Motion was carried, and the Bill read a second time.

STAMP DUTIES.

MR. SCONCE postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "to consolidate and amend the law relating to Stamp Duties."

TRANSPORTATION OF CONVICTS.

MR. HARINGTON moved that the Bill "relating to the Transportation of Convicts" be referred to a Select Committee consisting of the Vice-President, Mr. Forbes, and the Mover.

Agreed to.

The Council adjourned.

Saturday, March 17, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon. J. Wilson,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
H. B. Harington, Esq.,	A. Sconce, Esq.

ARTICLES OF WAR (NATIVE ARMY); AND JOINT STOCK BANKING COMPANIES.

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XIX of 1847" (Articles of War for the Native Army), and the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability."

POWERS OF MAGISTRATES.

THE CLERK reported to the Council that he had received a communication from the Officiating Under-Secretary to the Government of the North-Western Provinces, relative to the proposed increase of the powers of Magistrates.

MR. HARINGTON moved that this communication be printed.

Agreed to.

EMIGRATION.

THE CLERK also reported that he had received from the Home Department a further communication from the Secretary of State for India, regarding Emigration to the Island of St. Vincent.

COTTON FRAUDS (BOMBAY).

MR. LEGEYT presented the Report of the Select Committee on the Bill

"for the better suppression of frauds in the Cotton Trade in the Presidency of Bombay."

CONSERVANCY.

The VICE-PRESIDENT presented the Report of the Select Committee on the Bill "to amend Act XIV of 1856."

KOONCH AND CALPEE.

Mr. HARINGTON moved the first reading of a Bill "to remove the Pergunnahs of Koonch and Calpee in Zillah Jaloun from the operation of the general Regulations." He said, the Pergunnahs of Koonch and Calpee, to which this Bill related, were formerly included within the limits of the district of Humeerpore, which formed part of the Province of Bundelkund, and, equally with the rest of that district, they were subject at present to the Regulations of the Bengal Code. In the year 1853 the two Pergunnahs in question were transferred by a Resolution of the Honorable the Lieutenant-Governor of the North-Western Provinces from the district of Humeerpore to the district of Jaloun, to which they continued attached. But Jaloun was what was called a Non-Regulation District, and in order that the entire district might be placed on the same footing in this respect, it was proposed to remove the Pergunnahs of Koonch and Calpee, which, as already noticed, now formed part of the district, from the operation of the general Regulations, or, in other words, to make them also Non-Regulation. This was what was done when the Delhi Territory was taken away in the course of the year before last from the Government of the North-Western Provinces and placed under the Government of the Punjab, and as the same reasons existed for the passing of the present Bill which were deemed sufficient in the case of the Delhi Territory on the occasion of its transfer to the Punjab, and which led to the passing of Act XXXVIII of 1858, upon the model of which the Bill now proposed had been framed, it was hoped that the Council would not object to give their assent to it.

In the letter from the Secretary to the Government of the North-Western Provinces, in which he (Mr. Harington) had been requested to bring in the present Bill, it was observed that the proposition to remove the two Pergunnahs, to which the Bill related, from the operation of the general Regulations, involved no question as to the preference of one system of administration over the other—that the object in view was simply to put an end to the inconvenience and confusion that must arise from the necessity of applying the system prescribed by the Regulations to a few scattered villages of a district, the greater part of which was administered in accordance with other rules. Concurring in these remarks, he did not propose on the present occasion to enter into a consideration of the comparative merits of the two systems referred to, that was to say, the Regulation system and the Non-Regulation system. The question was a very large one, and at the proper time he should be quite prepared, as he had said more than once before, to go into the subject and fully to discuss it.

Meanwhile, he might say that nothing was farther from his thought or desire than to speak disparagingly of the labors of the many able and excellent Officers who had been, and were still, engaged in administering what was called the Non-Regulation system. To those Officers as a body he most willingly accorded the highest praise, but he must observe that, whenever he heard comparisons drawn between the Non-Regulation and Regulation systems unfavorable to the latter, he could not help wishing that those who made the comparison would take the trouble of pointing out wherein the difference lay, and in what the superiority of the one system over the other consisted, and that they would give them something more than bare assertion in the way of proof. He believed that very great misapprehension prevailed in respect to the difference of the two systems and as to their results. Those who were in the habit of lauding the Non-regulation system at the expense of the Regulation system, would seem to be ignorant of the fact that, as regarded the Punjab at least, their

Revenue and Criminal systems were copied from the system of the North-Western Provinces. This, if he recollected rightly, had been frankly admitted by the Punjab Government so far as the administration of Criminal justice was concerned, in one of the early reports of that Government, and with the new Code of Civil Procedure which had lately been introduced, and which he (Mr. Harington) was assured, by competent Judges in all parts of the country, was working admirably, and producing all the good effects expected to follow its introduction, he felt certain that the administration of Civil justice in the Regulation Provinces would be able to challenge comparison with that of any other part of India. He would not trust himself to say more on this subject at present.

The Bill was read a first time.

ESCAPED OFFENDERS.

MR. HARINGTON moved the first reading of a Bill "to amend Act V of 1858 (for the punishment of certain offenders who have escaped from jail, and of persons who shall knowingly harbour such offenders)." He said, this Bill, to amend the law for the punishment of persons who escaped from jail during the late disturbances, and of persons who knowingly harboured such persons, was introduced at the request of the Honorable the Lieutenant-Governor for the North-Western Provinces, who, without questioning the propriety or necessity of Act V of 1858, in which the present law was contained, at the time that Act was passed, had brought to notice that in some places under his Government, such, for instance, as the Provinces of Rohilkund and Bundelkund, the authority of the British Government was not re-established until several months after the date upon which Act V of 1858 received the assent of His Excellency the Right Honorable the Governor-General, and it was consequently quite impossible for persons who had escaped from jail in those places to comply with the particular provision of the Act, which required that they should surrender themselves 'to a Magistrate or Police Officer within one month from the passing of the Act.

In the last communication received by him from the Honorable the Lieutenant-Governor on the subject of this Bill, His Honor remarked :—

> "The Law cannot be properly held to enact or demand impossibilities; and it was impossible for a prisoner, say of Bareilly, to surrender himself within one month from the passing of the Act, namely, on or before the 1st March 1858, because until May following there was not, in the district of Bareilly, any Magistrate or Police Officer of the British Government to whom an escaped convict could surrender himself."

But the terms of Section I Act V of 1858 were imperative, and expressly directed that, unless an escaped convict surrendered himself in the manner and within the time already mentioned, he should be transported for life. Here no discretion was left to the Court or Officer trying the case. On conviction, sentence of transportation for life must be recorded, and a modification of the law, as pointed out by the Honorable the Lieutenant-Governor of the North-Western Provinces, appearing to be called for on principles of justice, the Bill, to the first reading of which the assent of the Council was requested, commenced by enacting that—

> "It shall be competent to the Executive Government of any Presidency or place to declare by an order, as regards any or all of the districts under such Government, the time within which the persons who, within such district or districts shall, since the 1st of May 1857, have escaped from jail or other lawful custody, whilst detained either under sentence of imprisonment for any of the crimes mentioned in Section III of the said Act, or under committal for trial, or under a charge of being guilty of any such crimes, ought to have surrendered themselves to a Magistrate or Police Officer; and no such person who shall have so surrendered himself within the period fixed as aforesaid, shall be liable to be prosecuted under the said Act."

The Executive Government would, he apprehended, have no difficulty, from the information before it, in fixing, as regarded the several districts subject to its authority, the time at which the surrender of escaped convicts, in the manner pointed out in Act V of 1858, might have taken place, and he thought that the proposed amendment, which he

had just read, would do all that was necessary as regarded this part of the case.

But the Honorable the Lieutenant-Governor of the North-Western Provinces was also of opinion that the penalty of transportation for life, which the Court had no alternative but to award in all cases falling within the provisions of Section I Act V of 1858, was too severe, particularly when the convict, at the time of his escape, was undergoing a sentence of imprisonment on conviction of an affray, which, if attended with personal violence, was one of the offences rendering the infliction of the penalty in question imperative.

The great severity of this provision might perhaps explain in some measure why it was that so small a number of escaped convicts had surrendered themselves, or had been arrested since Act V of 1858 was passed. From a return which he had received, he found that the number of prisoners reported to have escaped from the jails in the North-Western Provinces, since the month of May 1857, was 19,708, and that the number ascertained to have been recaptured, or to have surrendered themselves, was only 3,763, leaving nearly 16,000 escaped prisoners unaccounted for. The period allowed for surrender in Act V of 1858 having long since expired, the prisoners, who were still at large, might fairly argue that, as they could gain nothing and must lose every thing by giving themselves up, it was better for them to keep out of the way as long as they could. But whether the great severity of the law had or had not had any thing to do with the small number of surrenders or arrests, he thought that all would agree with the Honorable the Lieutenant-Governor for the North-Western Provinces, that the time had arrived when some mitigation of the punishment prescribed in the Act might be properly and perhaps beneficially allowed, and accordingly the second Section of the proposed Bill declared in modification of Sections I and II of Act V of 1858, that

"Every person who, since the 1st May 1857, shall have escaped from jail or other lawful custody, whilst detained as aforesaid, and who shall not have surrendered himself within the time declared by the Executive Government as aforesaid, may be sentenced to transportation for life or for any shorter period not being less than five years, or to imprisonment with or without hard labor in irons for any period not exceeding three years, in addition to any unexpired term of his original sentence. In any case falling within the provisions of this Section, in which the Magistrate shall be of opinion that a more severe sentence than three years' imprisonment, with or without labor, is not called for, it shall not be necessary for the Magistrate to order the commitment of the accused to the Sessions Court, but he may himself pass sentence, and proceed to carry the sentence into execution."

The last part of this Section had been introduced in accordance with a suggestion of the Honorable the Lieutenant-Governor of the North-Western Provinces, in order to obviate the necessity of a commitment to the Sessions Court, in cases in which the Magistrate should be of opinion that a more severe punishment than three years' imprisonment, with or without labor, was not called for. In practice this provision would no doubt cause a great saving of time and labor to the Sessions Court, and it would at the same time greatly promote the convenience of witnesses who would, by means of it, often escape the necessity of a second attendance for the purpose of giving evidence.

The next Section declared that—

"All sentences already passed, which would be valid under Sections I and II Act V of 1858 as now amended, shall be deemed valid sentences."

It appeared that, either from ignorance of the law or from an erroneous construction of its provisions, many sentences had been passed by the Criminal authorities in the North-Western Provinces, which were not warranted by the terms of the existing law, and as it was not considered desirable or expedient to disturb these sentences, or to re-open the cases in which they had been passed, the Section which he had just read had been introduced to give validity to any sentences of this nature and to prevent their legality from being called in question hereafter.

The next and last Section had been introduced with a somewhat similar

object. In the cases to which this Section would apply, no sentence had indeed been passed, but—which amounted very much to the same thing in so far as affected the legality of the proceeding—the persons concerned had been remanded to jail to undergo the term of imprisonment remaining unexpired at the time they broke jail, without being subjected to any new trial or additional punishment for making their escape. In these cases also it did not seem advisable that any further proceedings should be held.

He had now explained the several provisions of the Bill. At one time it occurred to him that Act V of 1858 might be repealed altogether without much, if any, injury to the cause of justice. But amongst the prisoners who were still at large, there were a great number of old and hardened offenders, whose removal from the country, either for the rest of their lives, or for a term of years, whenever they might be apprehended, would be very desirable, and, upon the whole, he was disposed to think that it would be better to continue the Act, as now proposed to be modified, if only to meet the cases of prisoners of this description. The Honorable the Lieutenant-Governor of the North-Western Provinces concurred in this view. Under any circumstances the Sections relating to the harbouring of escaped convicts would require to be retained.

He would only add that the Honorable the Lieutenant-Governor for the North-Western Provinces, in the exercise of the large powers vested in him by law, might modify any sentence which appeared to him too severe, or he might remit any additional punishment awarded against an escaped convict for breaking jail, in cases in which he should consider that such additional punishment could not justly be enforced. But the number of cases calling for His Honor's interference in either of the two modes just mentioned, would necessarily be very large, so much so as to give to this proceeding the appearance of setting aside the law altogether. The Honorable the Lieutenant-Governor had therefore deemed it preferable to come up to the Legislature and to ask for such modification of the law as might be considered proper under the circumstances represented by him, and he thought that they would all agree that His Honor was right.

The Bill was read a first time.

STAMP DUTIES.

MR. SCONCE moved that the Council resolve itself into a Committee of the whole Council on the Bill "to consolidate and amend the law relating to Stamp Duties;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I provided that, "From the day of 1860," the several Regulations therein specified, relating to the collection of Stamp Duties, should be "repealed, except in so far as they rescind other Regulations or parts of other Regulations, and except as regards deeds, instruments, or writings which shall have been made or executed, and all proceedings or matters which shall have taken place before that day."

MR. SCONCE proposed to fill up the blanks in the beginning of the Section, by inserting the "1st August" as the date for the commencement of the Act.

MR. LEGEYT would prefer if the 1st of October were fixed for the commencement of the Act, so as to give time for its translation.

MR. FORBES would leave it to the discretion of the Executive Government to fix the time from which the Act should take effect.

MR. WILSON said, though it was very necessary that the Bill, which was a Revenue Bill, should come into operation as soon as possible, yet the Bill was of such a nature that it should not be allowed to take effect until it was properly understood; and therefore he was inclined to think that it would be better to forego the additional revenue to be derived from the Bill for a little while, in order to give

time for its being carefully considered. He entirely concurred in the suggestion of the Honorable Member for Madras, and if the Honorable Member for Bengal had no objection, he would move to substitute "From and after a date to be notified in the Official Gazette by the Governor-General in Council" for "From the . day of 1860."

THE CHAIRMAN said, that the Section under consideration did not provide for the commencement of the Act, but was only a repealing Clause. He would propose, in lieu of the words "From the day of 1860," the insertion of the words "From the time when this Act shall come into force." A new Section might be introduced at the end of the Bill, providing that the Act should take effect from and after a date to be notified as proposed by the Right Honorable Gentleman.

THE CHAIRMAN'S Motion was carried.

A similar alteration was made at the conclusion of the Section, and after the inclusion of Regulation VI. 1828 of the Bombay Code among the Regulations to be repealed, the Section was passed.

Section II was passed after some verbal amendments.

Section III was passed as it stood after some discussion.

Section IV provided as follows :—

"The Governor-General in Council may, from time to time, prescribe the form and material of the stamps to be used, and the mode and place of impressing, affixing, or denoting thereon the value thereof under the provisions of this Act."

MR. HARINGTON moved the substitution of the word "shall" for the words "may from time to time," and the addition of the words

"And may from time to time alter and vary such orders. All orders made by the Governor-General under this Section shall be published in the Official Gazettes of the several Presidencies and places in which such orders are to be in force."

The amendments were severally agreed to, and the Section then passed.

Section V was passed after a verbal amendment.

Section VI. provided as follows :—

"In any case where an adhesive stamp shall be used for the purpose aforesaid on any receipt, or upon any draft or order chargeable with the duty of one anna by this Act, the person by whom such receipt shall be given, or such draft or order signed or made, shall, before the instrument shall be delivered out of his hands, custody, or power, cancel the stamp so used, *by writing thereon his name, or the initial letters of his name* in such a manner as to show that such stamp has been made use of, and so that the same may not be again used; and if any person who shall write or give any such receipt or discharge, or make or sign any such draft or order with any adhesive stamp thereon, and shall not *bonâ fide* in manner aforesaid cancel such stamp, he shall forfeit a sum not exceeding one hundred Rupees."

SIR BARTLE FRERE proposed the omission of the words in italics.

The Motion having subsequently been withdrawn—

MR. WILSON moved the substitution of the words "or in such other manner," for the words "in such a manner," thus retaining the words proposed by Sir Bartle Frere to be omitted as containing a fair suggestion as to a mode of cancelling a stamp.

The Motion was carried, and the Section as amended then passed.

Sections VII and VIII were passed as they stood.

The further consideration of Section IX was postponed after amendments.

Section X was passed after verbal amendments.

Section XI was passed as it stood.

Section XII provided as follows :—

"No instrument or writing, for which such duty shall be payable under Section II of this Act, shall be received as creating, transferring, or extinguishing any right or obligation, or as evidence in any civil proceeding in any Court of Justice, whether established by Royal Charter or otherwise, or shall be registered in any public office, or authenticated by any public officer, unless such instrument or writing be upon a stamp of a value not less than that indicated to be proper for it by the said Schedule."

After two verbal amendments on the Motion of Mr. Sconce—

MR. HARINGTON proposed the addition of the following proviso :—

"Provided that nothing in this Section shall be held to debar a Court from receiving any

such instrument and writing which, although written upon stamp paper, is upon a stamp of a value less than that indicated as proper for it by the said Schedule, subject to the conditions contained in Section 130 Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.) The party producing such instrument or writing, or requiring its production, shall pay into Court the deficiency of the Stamp Duty, and a penalty equal to ten times the amount of the deficiency."

The Motion having subsequently been withdrawn,

THE CHAIRMAN moved that the words "except as otherwise provided by this Act" be prefixed to the Section.

The Motion was carried, and the Section as amended then passed.

Section XIII, Clause 1, was passed as it stood.

Clause 2 was passed after a verbal amendment.

The consideration of Clauses 3 and 4 was postponed.

Section XIV was passed after verbal amendments.

Section XV (which prescribed the duty payable on the issue of Bank Notes) was omitted on the motion of Mr. Wilson.

Section XVI provided as follows :—

"The expense of providing the proper stamp whereon to write any receipt shall be borne by the party giving the receipt."

After some discussion, MR. WILSON moved the substitution for the above of the following Section :—

"Every person receiving payment of any sum of money, the receipt for which under this Act requires a stamp, shall, if required, give a receipt bearing the proper stamp indicated by this Act, and shall bear the expense of furnishing the same, and in case of refusal shall be liable to a penalty not exceeding one hundred Rupees. The expense of providing the stamp of all Bills of Exchange, letters of credit, drafts, cheques on bankers, or others, promissory notes, hoondees, and other orders and obligations for the payment of money made or drawn in the British Territories in India (not being bonds, or instruments, or writings bearing the attestation of one or more witnesses) shall be borne by the person making or drawing the same."

Agreed to.

Section XVII was passed after verbal amendments.

Section XVIII was passed as it stood.

Section XIX provided as follows :—

"The Governor-General in Council may, by an order, direct that in any district not subject to the general Regulations, lower rates of Stamp Duty shall be taken on all or any of the instruments and writings specified in Schedule A annexed to this Act, except Bills of Exchange or other instruments classed as Bills of Exchange and receipts, and may prescribe such lower rates of duty, or may exempt from Stamp Duty the instruments or writings specified in Schedule B annexed to this Act."

MR. WILSON moved the substitution for the above of the following Section :—

"The Governor-General in Council may, by an order to be published in the Calcutta Gazette, direct that in any district such lower rates of Stamp duty as he shall prescribe shall be taken on all or any of the deeds, instruments, or writings specified in the Schedules to this Act, or altogether exempt the same, provided that this Section shall not extend to Bills of Exchange or other instruments classed as Bills of Exchange."

Agreed to.

Sections XX to XXX were severally passed as they stood.

Section XXXI was passed after verbal amendments.

Section XXXII was passed as it stood.

Section XXXIII was passed after several amendments.

Section XXXIV provided that any person fraudulently counterfeiting or altering stamps should be "punished by imprisonment, with or without hard labor, for a term not *less than two years nor more than seven years.*"

MR. HARINGTON moved the omission of the words in italics, and the substitution for them of the words "exceeding four years, or by transportation for a term not exceeding seven years."

The Motion was carried, and the Section as amended then passed.

Section XXXV was passed after verbal amendments.

Section XXXVI was passed as it stood.

Sections XXXVII and XXXVIII were passed after amendments.

Section XXXIX provided as follows :—

"No person shall be proceeded against for any offence under this Act, except at the suit or prosecution of the Collector of the Stamp Revenue."

Mr. WILSON moved the insertion of the words "affecting the public revenue" after the word "offence."

Agreed to.

Sir BARTLE FRERE moved the addition of the following words to the Section :—

"Acting under the orders of the Board of Revenue or other authority charged by Government with the duty of carrying out the provisions of this Act."

Agreed to.

The CHAIRMAN moved the further addition of the following words to the Section :—

"Or other public Officer duly authorized by Government."

The Motion was carried, and the Section as amended then passed.

Sections XL to XLII were severally passed as they stood.

Section XLIII was the Interpretation Clause.

After a verbal amendment, on the motion of Mr. Sconce—

The CHAIRMAN moved the insertion of the following interpretation :—

"The term 'Bill of Exchange' shall include a hoondee or any other instrument of a like nature."

The Motion was carried, and the Section as amended then passed.

The further consideration of the Bill was postponed till Saturday next, and the Council resumed its sitting.

POSTPONED ORDERS.

The Orders of the Day for Committees of the whole Council on the following Bills were postponed till Saturday next :—

Bill "relating to the Emigration of Native Laborers to the British Colony of St. Vincent."

Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of Furruckabad."

Bill "to provide for the execution of processes within the precincts of the residence of His Majesty the King of Oude."

Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on Boats, Rafts, and Floats passing through the Circular and Eastern Canals").

DUTY ON COUNTRY TOBACCO.

Mr. HARINGTON said, there was one rather important question which, before the Council adjourned, he was anxious to put to the Right Honorable Gentleman opposite, in reference to that part of the very able financial statement made by him in that Chamber a few weeks ago, in which he mentioned that it was in contemplation to impose a duty upon tobacco grown in the country. The Right Honorable Gentleman was reported to have said—"The only other tax we propose is a duty upon home grown tobacco to an amount as nearly corresponding with the import duty as possible." He need not remind Honorable Members that the Bill to amend the Customs Act of last year, which was lately passed by the Council, and which now only awaited the assent of the Right Honorable the Governor-General to become law, imposed an import duty of eight annas per seer on unmanufactured tobacco, and of one Rupee per seer on manufactured tobacco, from whatever place it might be imported into British India, and the natives, understanding from the words of the Right Honorable Gentleman which he had quoted, that the imposition of a duty on tobacco grown in the country, at nearly the same rate as was proposed for imported tobacco, was what was intended, had, not unnaturally, become very seriously alarmed. He (Mr. Harington) had said, in reference to the apprehensions which were very generally entertained in respect to the proposed duty upon tobacco, that they were not unnatural, because all who heard him must be sensible that any thing approaching to a duty of eight annas per seer on tobacco grown in the country would add so greatly to the price of that article as to place it beyond the reach of a very

large portion of the population who had been accustomed to the use of tobacco almost from their childhood, and who regarded it not as a mere luxury or pleasant pastime, but as an absolute necessary of life, and it could be no matter of surprise, therefore, that the introduction of a measure which, it was believed, would deprive large classes of the native community of what they valued as much as any article of daily food, should be viewed with considerable alarm and great dissatisfaction There could, he thought, be no doubt that the words of the Right Honorable Gentleman had been altogether misunderstood. Looking to the great difference between the price of American and other imported tobacco, and the price of tobacco grown in the country, he believed that what the Right Honorable Gentleman really meant was that the duty on home grown tobacco would be fixed at a rate which would bear about the same proportion to the selling price of tobacco of that description as one Rupee or eight annas, according as the tobacco was manufactured or unmanufactured. bore to the market value of imported tobacco. He was sure the Right Honorable Gentleman would agree with him that this was a point on which no doubt should exist, and that it was especially desirable that all causes of alarm in respect to the schemes of taxation which were under consideration should, as far as possible, be removed from the native mind, in order that the introduction of the important measures, of which the Right Honorable Gentleman had given notice, might not be accompanied by groundless apprehensions and mistaken notions. It was for this reason that he thought further explanation was called for from the Right Honorable Gentleman. If the Right Honorable Gentleman considered that he could properly and without inconvenience answer the question at the present time, he would ask him what was the intention of the Government in respect to the amount of duty to be imposed upon home grown tobacco, as distinguished from tobacco imported from other places into the British Territories in India.

Mr. WILSON said, he was very glad the Honorable Gentleman had put this question to him, because he had reason to believe that he was quite correct in saying that much misapprehension prevailed as to the scope of the measure with regard to tobacco, which it was his intention, on behalf of the Government, to introduce. He did not think it would be quite right to call that misapprehension a state of alarm; but be that as it might, no doubt, from what he had seen in the public papers, there was an erroneous notion abroad as to the extent to which it was their intention to impose a duty on tobacco, and he was therefore obliged to the Honorable Member for affording him an opportunity to correct it. The expression which he used in explaining the intentions of the Government upon this subject was this: "We propose a duty on home grown tobacco to an amount as nearly corresponding with the import duty as possible." He had just explained that the import duty under the new tariff would be eight annas the seer upon unmanufactured foreign tobacco. The great bulk of the foreign tobacco imported was American, which was valued at 18 Rupees the maund in the tariff valuations, while the tobacco imported from the Gulph and the Red Sea was valued at 20 Rupees. Now, the quality of the home grown tobacco was generally, he might say always, much less than what had been quoted, and it would be in relation to the actual average value of Indian tobacco, as compared with foreign tobacco, that the duty would be determined, and which was a point now under consideration. This was a subject upon which he made very extensive enquiries during his journey in the North-West. He found in Oudh, for example, that the average produce of tobacco per beegah was about 12 maunds of dry leaf, the value of which on the ground was, if of good quality, about 5 Rupees a maund or 60 Rupees, while 2 Rupees more were obtained for the refuse or stalks, making the value of the produce about 62 Rupees, and he found that the value of this leaf in the bazars at Lucknow was 6

to 8 Rupees the maund. Now, assuming this as a fair average for his present purpose, the proportionate duty upon a price of 6 to 8 Rupees a maund, to that which was charged upon foreign tobacco worth 18 Rupees a maund, would be as nearly as possible, say three annas the seer, in place of eight annas—and we might find, when our enquiries were completed, that upon the whole average our home duty would come out even lower than this—indeed when the very low qualities of tobacco grown in some districts were taken into account, he doubted whether the average would come out much, if at all, above two annas and a half the seer. But we should be committing a great mistake if we supposed that this amount would be added to each seer of tobacco as purchased by the consumer in the bazar. Now, Honorable Gentlemen were no doubt aware that that which was sold in the bazars as tobacco for consumption was a compound mixture, containing a very large proportion of other articles. For example, he found in the North-West, and especially at Lucknow, that the mixtures sold in the bazars as tobacco to the public men was of three kinds. The first and commonest description used by the masses of the people was called Lalla Sahie, and was made in the following proportions:—24 maunds of inferior half dried leaf, equal to 12 maunds of dried leaf, and 36 maunds of "Sheera" or "Chota," that is, sugar-cane juice, with 24 maunds of sujjee, or coarse soda. Now, this mixture produced of the article sold to the public a quantity of 60 maunds, but of which the duty would be paid only upon 12 maunds, or one-fifth, so that assuming the duty to be two annas and a half the seer upon the dry leaf of the tobacco used, it would be only half an anna the seer upon the price now paid for this mixture in the bazar by the public. This was the description which was chiefly used by the poorer classes. The next kind was called Sadah, and consisted of 18 maunds of dried leaf to 18 maunds of Sheera or sugar-cane juice, and 1 seer of sujjee: these quantities resulted in a mixture sold equal to 30 maunds. In this case a duty of two annas and a half the seer upon the tobacco would be equal to an addition of one anna per seer on the mixture sold to the public. The third kind was called Khumeera, and contained the following proportion: 12 maunds of the best dried leaf, 24 maunds of Sheera, or sugar-cane juice, 3 maunds of Khumeer or native preserves for flavour, and 1 maund of scents. This mixture produced about 40 maunds for sale, and the duty on the 12 maunds of tobacco would therefore be less than one anna the seer on what was sold. So that, if we assumed that the duty was fixed at about 2 annas the seer, or from that to 3 annas, which he thought would be the highest, the actual addition to the price of the articles now sold in the bazar to the general consumer should not much, if at all, exceed about half an anna the seer, while that consumed by the higher classes would be increased in price about one anna the seer. He had now answered the question of the Honorable Member in the most explicit manner which his present information would admit of, and without pledging himself to the prices in detail, he had no doubt they would be found as near the truth as could be required for any practical purpose; and he trusted, with this explanation, that the public would see that the Government was disposed to deal with great leniency in the imposition of this tax, and to place it at a rate which would not be felt as a serious burden by the people.

PORTS AND PORT-DUES.

Mr. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues").

Agreed to.

BILLS OF EXCHANGE, &c.

Mr. HARINGTON moved that the Report of the Select Committee on the Bill "for declaring the law in

relation to Bills of Exchange and Promissory Notes payable on days generally observed as holidays" be adopted.

Agreed to.

The Council adjourned.

Saturday, March 24, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut-Genl. Sir James Outram,	Sir H. Forbes, Esq.,
Hon. Sir H. B. E. Frere,	Hon. Sir C. R. M. Jackson,
Right Hon. J. Wilson,	and
H. B. Harington, Esq.,	A. Sconce, Esq.

ARMS AND AMMUNITION.

The following Message from the President in Council was read by the Vice-President:—

MESSAGE No. 202.

The Honorable the President in Council has the honor to forward to the Legislative Council, in reply to their Message No. 125, dated the 3rd December last, the papers noted in the accompanying list (in original), which contain the information required as to the actual working throughout British India of Act No. XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same).

By order of the Honorable the President in Council.

W. GREY,

Secy. to the Govt. of India.

Fort William,
The 21st March 1860.

MR. SCONCE moved that the above papers be referred to the Select Committee on the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)."

Agreed to.

ELECTRIC TELEGRAPHS, RAILWAY CONTRACTORS, AND CUSTOMS DUTIES.

THE VICE-PRESIDENT also read Messages informing the Legislative Council that the Governor-General had assented to the Bill "for regulating the establishment and management of Electric Telegraphs in India"—

The Bill "to make provision for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers"—

And the Bill "to amend Act VII of 1859 (to alter the Duties of Customs on goods imported or exported by sea)."

STAMP DUTIES.

THE CLERK presented to the Council a Petition from the British Indian Association, regarding the Bill "to consolidate and amend the law relating to Stamp Duties."

THE VICE-PRESIDENT said, he thought it would be useless to move to print the Petition, as the Bill was about to come under a Committee of the whole Council that day. When the Council resolved itself into a Committee on the Bill, he proposed to move that the Clerk be requested to read the Petition in *extenso*.

INCOME TAX; AND LICENSING OF ARTS, TRADES, AND PROFESSIONS.

MR. WILSON said, the course which he proposed to take with respect to the Bills on the above subjects was one which he was not quite sure was followed by this Council. But it was one perfectly consistent with the practice of the House of Commons, and, in his opinion, one which would be most convenient for the Council to adopt. He had already, on a former occasion, so fully explained to the Council the views of Government with respect to these Bills, as to render any lengthy observations unnecessary. As the Bills would be in the hands of Honorable Members on Monday morning, and they would have the opportu-

nity of considering them before their second reading, which he proposed to move next Saturday, it appeared to him that it would be most convenient for the Council if he introduced the Bills without any further remarks. He, therefore, begged to move the first reading of a Bill for imposing a tax upon Incomes and a Bill for Licensing Trades and Professions.

SIR BARTLE FRERE seconded the Motion, which was put and carried, and the Bills were severally read a first time.

INDIGO CONTRACTS.

MR. SCONCE moved that the Standing Orders be suspended, to enable him to introduce a Bill "to enforce the fulfilment of Indigo Contracts."

SIR BARTLE FRERE seconded the Motion, which was carried.

MR. SCONCE said, he very much regretted that circumstances had arisen to necessitate the sudden introduction of this Bill. It was within the knowledge of the Council, generally, that for some time past, in one or two districts of Lower Bengal, much excitement had prevailed, arising out of disturbances connected with the cultivation of indigo. Happily this excitement seemed to have been greatly exaggerated. In only one or two districts such scenes had occurred. In Nuddea, happily, the excitement had not reached the point to which it had gone in the neighboring district of Moorshedabad; still the combination of the ryots against the Planters had presented itself in such a light as to render the immediate passing of a law on the subject necessary. From time to time some correspondence had been published in the newspapers. He would read a letter from the Commissioner of Nuddea, dated the 13th instant, in which that gentleman described generally the state of things in Nuddea up to that date. In the second paragraph the Commissioner observed:—

"Since the beginning of February the villagers of Messrs. Hill's Concern have been manifesting a determination to sow no more indigo. More recently this feeling has spread to the Lokenathpore, and to several villages of the Mulnath Concern, and in some cases it has led to noisy demonstrations, which have caused alarm and given rise to reports of outrages."

So far then it would appear that, even in the district of Nuddea, the excitement had only partially extended itself among the ryots, but it must be admitted that it was attended by acts of violence and supposed acts of arson. He need not enter in detail into all these cases, but simply refer, in the first instance, to an outrage perpetrated on Mr. Campbell, respecting which the Officiating Magistrate of Nudden thus wrote:—

"The most serious one, in which Mr. Campbell stated that he had been knocked off his horse and beaten till he was insensible, has to a certain extent proved a mistake. Mr. Campbell had just been measuring some lands, which the ryots assert he had no right to do. The villagers gathered together, one or two men seized his horse's bridle, two men from the crowd struck him with their latties, one on the shoulder, and the other more slightly on the back. The horse reared and fell, and Mr. Campbell must have been stunned by the fall. It is quite clear, from the absence of all other marks, that he was not struck after he fell. I am bound also to say that the witnesses in this case had not been properly warned on being produced. Mr. Campbell's own statement of what occurred up to the moment of his fall was temperate and reliable, and one man has been convicted on it, and sentenced to a year's imprisonment. I regret much that no more of the defendants could be punished. In none of the other cases was any very serious bodily harm done, and the sentences have been in proportion. I mention this much, as the temper of the ryots here is supposed to be more violent than it really is. In all these cases their object seems to have been to show determination enough to prevent the Planters from coming to the village again, but not to revenge supposed injuries. The difference appears to me material, and its record but just."

That was one kind of violence which had been exhibited. Another reported on by the Magistrate referred to kidnapping of ryots. In a letter, dated 3rd March, the Magistrate thus wrote:—

"A complaint, however, was preferred in December last, to the effect that six men of the village of Soupookoriah had been seized on the 26th of that month by a party of

lattials despatched from the Murdah Factory. Search for them failed, and it was only by an accident that they were all released on the 23rd February. Their depositions wear an appearance of truth, which the unanimous *alibi* pleaded by all the defendants supports. They relate they were marched about to almost every factory on Mr. Hill's Concern. They do not, however, charge any one, except the lattials originally employed to seize. They say they never saw any one but their guards, and never saw daylight. The case is not absolutely free from doubt; it is, however, impossible, but that, if true, it will be perfectly clear at last.

There were several other cases of the same kind, but in none had the termination of the prosecutions been reported. He had said that cases of arson had also occurred in some districts. One case had occurred in the verandah of the Khajoorah Factory, regarding which the Magistrate wrote that he had very little doubt that it was the act of an incendiary. Another fire occurred in a village of Doodhpetley, in which the village was fired, twenty-eight houses burnt down, and property estimated at 5,000 Rupees in value burnt. Respecting that case, Mr. Herschell, the Magistrate of Nuddea, wrote:—

"In regard to the Doodhpetley fire, I regret to say that Mr. Meares has shown no desire to remove the suspicion of the ryots against the factory—a suspicion resting on grounds much stronger than in the Khajoorah case against the ryots. The ryots do not prosecute, but I have directed Mr. Maclean to offer a reward of one hundred Rupees for the discovery of the offender. No further breach of the peace has occurred in any part of the district."

The Magistrate, in a subsequent Report, made the following remarks regarding the conduct of the Police:—

"The conduct of the Police has been much blamed in the public journals during the last fortnight, but a distinction should be made between village chowkeedars and the Thannah Police. The co-operation of the former with the ryots is described as misconduct on the part of the latter. These are not proved to have taken part in any overt act, and on one recent occasion, I have reason to believe that the firmness of a single burkundauze prevented a disturbance at Lokenathpore. A villager had been summoned to the factory to continue his daily work which, since the present difference, he had discontinued. Having gone to the factory, he was severely thrashed by two men, one of whom has been sentenced to imprisonment for a month, the other being acquitted for want of proof. Another old man was (immediately afterwards) literally dragged to the factory, there beaten, and finally released by the burkundauze, who prevented the villagers, already assembled from resorting to violence, and volunteered to release the man from the factory. This case is under trial."

So far then on both sides there were complaints of violence, and acts of arson—to meet which, it might be presumed, no special law was needed. The events which had occurred in the Moorshedabad district, west of the Bhagiruttee, were, no doubt, of a somewhat graver character, but respecting which no official account had been received; but, upon the whole, looking to the combination on the part of the ryots to disregard their engagements for the cultivation of indigo, it was incumbent on the Government to pass a law to meet the emergency which had arisen. With the permission of the Council, he would read a letter from the Lieutenant-Governor of Bengal, which contained his reasons for recommending the Bill now before the Council. The Lieutenant-Governor observed as follows:—

"My reasons for recommending the Bill are, in short, these:—

"That there is ground for believing that a great commercial calamity is threatened by the feeling which has suddenly manifested itself amongst indigo ryots, to repudiate their agreements to cultivate indigo; although advances have been made to and accepted by them only a short time ago, in the usual manner, and upon the usual understanding, namely, that they should cultivate indigo for the Planters at the usual rate.

"I am myself of opinion that the indigo cultivators have, and long have had, great and increasing ground for just complaint against the whole system of indigo cultivation. But if they desired to break off their connexion with that system, they should have done so before receiving the season's advances. After working off existing engagements, for which they have received the usual advance, they will have it in their power honestly to refuse to grow another plant of indigo, unless it is made for their own interest to do so. It will be monstrous if they are not allowed, not merely by the theory of the law, but in effect, to exercise their legal and moral rights in this matter. But they have, in my opinion, no moral right, and certainly they have no legal right, to turn suddenly round upon the Planters, and, with nothing to complain of now

more than they had before, to refuse to do what, up to this moment, they have led the Planters to expect that they would do according to custom and agreement. I conceive that, whether the custom is good or bad, and whether the agreement on the ryots' parts be provident or improvident, and whether the general position of the ryots who grow indigo be or be not for the time being one of great hardship; no individual ryot has a moral right to break his agreement. And still less can I think that a mass of ryots who have agreed and accepted advances, in the usual manner, have any moral right to combine for the purpose of simultaneously breaking their agreements in order to ruin the other party.

"Against such a combination, and for the purpose of saving, if possible, a great commercial interest, which, however false its position may long have been, has certainly done nothing to the injury of the ryot since the last advances were made and accepted, in the usual course, a few weeks ago, it appears that a law, giving a very summary but still a fair trial, and inflicting penal damages on the party who, after a fair trial is found to be determined wilfully to break his engagement, is both justifiable and proper.

"The draft of a law which I enclose does no more than this.

"But I am of opinion that no law that could be framed regarding indigo-planting at the present moment, should be more than temporary; especially, I think, that no law in the interest of the Planter could, at the present moment, be honestly proposed which should have any effect beyond the season now running on. We all of us know that the system is full of abuses.

"If we had never heard a word about indigo-planting since we arrived in India; if there was not, upon record, a single case of abuse on the part of an Indigo Planter or a Zemindar, (and in this respect I desire to draw no invidious distinction between one class and another), the mere fact of the existence of the present difficulty would in itself prove that the system is rotten, and that the rottenness consists in this, that in practice the ryot is made to act like a slave, not like a freeman. Under a wholesome and fair system of trade, there must be, in all dealings between two parties, mutual gain, or at least the hope of mutual gain, and both parties to every dealings must be free agents. If therefore, the indigo-planting trade were in a wholesome and fair state, and an equal law were practically applicable to the rich and to the poor party, in dealings between Planter and ryot, it is certain that the ryot would be as much afraid of the manufacturer not buying his plant, and as clamorous for a special law on his side, as the manufacturer is afraid that the ryot will not cultivate and supply him with enough of the plant, and clamorous for a special law on his side. We see that the present struggle on the part of the ryots is to avoid the cultivation of indigo. From this it is certain that ryots who cultivate indigo are forced to do so by some illegitimate coercion. The same men who fight for the privilege of cultivating a field with rice for sale in the open market are now almost in rebellion in order to escape the calamity of cultivating a field with indigo for sale (if sale it can be called) to the Planter. There must be a thorough enquiry into the whole system. There would have been such an enquiry long ago, I believe, if people had not been afraid of bringing on such a crisis as has now occurred. The system was such that sooner or later a crisis was inevitable. The crisis has come in the natural course of things, and there is no longer an excuse for shirking the disclosure of the disease, and the application of the remedy.

"For these reasons I could recommend no law other than a temporary law, and no law of any kind unless its promulgation to the ryots may be accompanied with a promise of a full and thorough enquiry into past practice, and thereafter of a well considered law which shall afford, practically, equal and complete protection to the ryot as well as to the Planter."

It would be understood from what he had just read that it was not the intention of the Bill in any way to solve the many conflicting and contradictory interests asserted by the ryot on the one side and the Planter on the other, or to determine the legal relation which the Planter and the ryot ought to occupy towards each other for the future. The Bill was grounded on the assumption that an advance had been made to the ryot by the Planter to sow indigo, and that the ryot received the money paid on that understanding, and he believed that the Government were fully justified in asking this Council to pass a law which would strengthen its hands, and enable it to check, if possible, the disaffection on the part of ryots. No doubt the first object of the Executive Government was the preservation of the public peace. Next, to express the sympathy with the Planter in this sudden difficulty, and as far as possible to give him legitimate support. Looking at the enormous amount of advances made in the different districts for the cultivation of indigo and for the purchase of seed which had been, or was about to be, distributed, he had no doubt that the Legislature might very properly lend its aid for the protection of so great property now seriously imperilled. But it would be already understood from the letter of the Lieutenant-Governor, which he had

read, that in proposing this Bill there was no intention to prejudge the conflicting issues raised by the Planter and ryot. On the contrary, it was announced in the Preamble that it was the intention of the Government to appoint a Commission, after the close of the present season of cultivation, for the purpose of enquiring into the present practice of indigo-planting in Bengal, and of investigating the grievances which might be felt on the part of the ryot; and, as the result of that enquiry, it would be the object of the Government to propose such laws as would protect the rights of ryots and Planters. He would not, for his own part, venture to offer himself to the Council as any authority in this matter, but it seemed to him important to lay prominently before the Council, when the Government were about to introduce a law like this, what sort of consideration should be the basis of the law. What, he would ask, was a ryot? He always understood a ryot to be the cultivator of his own land. To him belonged the produce of the land, and on him rested the risk attending the cultivation of what was understood to be a most precarious crop. In that sense it appeared to him that the ryot was, properly speaking, a farmer or planter, and that the Indigo Planter as he was called, contracting by an advance to purchase the plant, was more on the footing of a manufacturer of the dye. This was not a question of names, but of things. We were not to ignore the position and rights of the cultivating ryot. He had observed that, in a petition lately presented by the Indigo Planters' Association to the Lieutenant-Governor, the Planter and ryot were represented as capitalist and laborer. If it was so, if that definition accurately exhibited the position of the Planter and ryot, it appeared to him that, as regarded on the one hand the legal interest of the Planter and on the other the exact footing on which the ryot stood towards him, there was the widest difference in the estimation they respectively formed of their own rights. He need hardly say that a farmer was one thing, and a laborer was another. As a farmer, the ryot was subject to the direction of his employer, whilst as a laborer, he was his own master. But under any circumstances the ryot was entitled to have his status fairly understood, and to demand that, if he had a right to cultivate, he should not be considered to be on the footing of a laborer.

He would also desire to illustrate what seemed to him the idea which constituted a radical difference in the opinion of the two parties, by bringing to the notice of the Council a letter which had been written by the Manager of the Lokenathpore Concern, Mr. Meares, and printed in the *Bengal Hurkaru* of the 19th March. The observation which he wished to bring to the notice of the Council was as follows:—

* "The Darogah of the Dumahoodah Thannah, soon after the Joyrampore disturbance broke out, in a report to the Magistrate, stated that the ryots had that idea in their heads. I at once let the ryots off a portion of the land I had intended they should give us in indigo, as I heard that the small increase I had ordered to be made in that village, was the reason of their discontent; they then came in and took their advances from our assistant, Mr. Tweedie, and I hoped there was an end of the matter, but the Darogah of the Dumahoodah Thannah again put them up to oppose the factory, and the consequence was they got up a number of false cases against our servants, cut out our marks from indigo land, and prevented our servants looking after their usual work."

He would ask the Council to consider the representation which Mr. Meares had made in his letter as to his own bearing towards the ryots. His remark was that, by being conciliatory towards them they had come in and taken their advances. But what was the nature of the conciliation he had used? He said that he had ordered the land under indigo cultivation to be increased, and the ryots being discontented, he had let off a portion of the land which he had intended they should give him in indigo. Here it must be observed that the ryot had not entered into a voluntary engagement for the cultivation of indigo; there was nothing more than Mr. Meares' intention to increase his crop. Mr. Meares might have been right or wrong; he (Mr. Sconce) did not ask the Council

to give an opinion on that matter. What he wished to notice was that, if the right of occupancy was vested in the ryot, nevertheless Mr. Meares, disregarding that right of his own motion, seized the ryot's land, regulating his conduct solely by the interest of the factory, and his power to enforce it, and not at all by the assent of the occupying cultivator. He might adduce other cases of a similar kind, but it was not the intention of this Bill, as he said before, to enter into any such questions, the full investigation of which would be the duty of the Commission about to be appointed, when the question might be fully considered.

He would now proceed to draw attention to the provisions of the Bill. The Preamble recited :—

"Whereas it is expedient, pending a Commission of enquiry into the practice of indigo-planting in Bengal, which the Executive Government purposes to appoint after the close of the present season of cultivation, to make temporary provision for enforcing by summary process the execution of agreements entered into for the cultivation of indigo plants, and better to provide for the punishment of certain unlawful acts connected with such cultivation, it is enacted as follows :—

The first Section of the Bill provided that in case a cash advance had been made to a ryot, upon his agreement to cultivate indigo plant during the current season, if he should

"Wilfully delay or omit from and after the 24th day of March 1860, to cultivate, according to the condition of his agreement, the whole quantity of land which he has agreed to cultivate, and for the cultivation of which the cash advance was made, it shall be competent to the Magistrate to entertain a complaint made to the above effect on oath by the Planter who has made the advance, or by any person on his behalf, and to summon the person complained of to appear before him, in order to the investigation of the complaint preferred. If the Magistrate has reason to believe that the person complained of will not appear in obedience to the summons, he may issue a warrant for the arrest of such persons."

It was considered particularly necessary to restrict this Clause to cases in which cash advances had been made. There were cases where ryots agreed to cultivate, where no cash was advanced. He had seen a case—and it was not a rare one—in which a written agreement was taken from a ryot to cultivate seven beegahs of land on a supposed advance of 7 rupees. But it was said that 6 rupees and 8 annas consisted of an old debt, and only 8 annas was the advance actually made. It might be that such cases were not general, but they were not uncommon, and therefore it was the intention of this Section to confine the law to cases where money was actually paid. Another Section provided for intimidation. It enacted that—

"If any person, from and after the 24th day of March 1860, shall by evidence, threats, or otherwise intimidate or attempt to intimidate any other person who shall have entered into any such agreement as aforesaid, with the intention of inducing such persons to break the conditions thereof; or if any person, from and after the date aforesaid, shall conspire with any other person or persons for the purchase of causing the breach of any such contract or contracts as aforesaid, he shall, on conviction before a Magistrate, be liable to a sentence of imprisonment, with or without labor, for a period not exceeding six months, or to a fine not exceeding two hundred rupees, or to both, such fine being commutable, if not paid, to a further period of imprisonment not exceeding six months."

Another Section provided for malicious destruction of, or damage to, crops. It was next provided that no appeal should lie from the decision of a Magistrate, and finally, that the Act should expire within six months from the 24th of this month. These were the provisions of the Bill which he had the honor to propose, and he now begged to move that the Bill be read a first time.

SIR JAMES OUTRAM said, the Preamble of this Bill recited that an enquiry would hereafter be made by a Commission to be appointed for the purpose, whereas he thought it preferable that express provision should be made in this Bill for such a Commission. It was hardly necessary for him to state that the course proposed by the Honorable Member for Bengal had the entire concurrence of the Government of India, and that such concurrence would neither have been asked for nor obtained if the proposed measure had been open to

objection as a piece of one-sided or of class legislation. The Government of India had felt it their duty to a great and important branch of industry, and to the owners of the vast capital embarked in indigo-planting, to give their prompt and hearty support to the measure which the Lieutenant-Governor of Bengal considered necessary for the protection of that industry and capital; but it was only due to the Lieutenant-Governor and the Honorable Member to state that, in asking the assent of the Council to this measure, they stipulated that it should be coupled with, and form a preliminary to a full and fair enquiry into the whole subject, such as they might hope would lead to a final settlement of this much-vexed question, satisfactory to the reasonable desires of the owner of land, as well as of the owner of capital, and alike just to the ryot and to the planter—to the laborer and the employer of labor.

The question was, as the Council knew, a very large one. It had been long and acrimoniously discussed, and he (Sir James Outram) thought the Council could not proceed better than by a Commission so selected as to deserve general confidence in its fairness and impartiality, and armed with such powers as should enable it to ascertain the whole truth, and to go to the root of the matter.

He therefore proposed that the following Sections be added to and form part of the present Bill, and the Government trusted that the announcement of the measure would have some effect in allaying irritation and alarm, by assuring all classes that it was the firm resolve of the Government of India, not only to afford the fullest protection in its power to persons and property, and to preserve the peace of the country for the present, but to provide for giving full and prompt justice to all Her Majesty's subjects, Natives as well as Europeans, and to secure to them the full and peaceful enjoyment of all their rights for the future.

The following were the Clauses which he proposed:—1.—Directing the issue of a Commission of enquiry. 2.—Providing for a change in the constitution of the Commission by death, resignation, or new appointment. 3.—Giving power to summon witnesses, with the proviso above-mentioned. 4.—Giving power to administer oaths. 5.—Enabling Commissioners to exercise the same remedies for non-attendance of witnesses as a Court would. 6.—Making false evidence punishable as perjury.

The Bill was read a first time.

MR. SCONCE moved that the Standing Orders be suspended, in order that the Bill might be read a second time. In doing so, he said it was not his intention to proceed with the Bill further to-day.

SIR BARTLE FRERE seconded the Motion, and said that he had the less hesitation in doing so, because all the interests affected by the Bill were well represented in Calcutta and its immediate neighborhood, and it would be quite possible for Government to obtain all the criticism that could be desired from parties interested in the Bill during the week that would elapse, before the Bill, which would be read a second time that day, could finally pass, and he need not say that the Government would be glad to receive and pay every reasonable attention to any comments on the course they proposed which might be offered either by Members of that Council or by others.

The Honorable Member for Bengal had spoken of the measure he proposed as having an appearance of immaturity. But he (Sir Bartle Frere) thought that immaturity was more in appearance than in reality. The state of things which called for this Bill was not of any sudden growth. There had long been a general conviction that some measure of the kind would be necessary, and the measure which the Honorable Member for Bengal had brought in established no new principle of law, nor any novel machinery. It simply applied the law, as it stood, by a more summary process to give relief and redress in the present emergency, providing, at the same time, the means of inquiry which would, he (Sir Bartle Frere) hoped, furnish the data on which they could legislate permanently,

so as effectually to remedy the existing state of things.

It was to be regretted that the papers on which the Bill was founded could not be laid before the Council earlier, so as to enable them to judge of the necessity of the measure, but he (Sir Bartle Frere) might mention that the information before Government did not differ very materially from the statements which had appeared in the newspapers. Opinions differed as to the extent and character of the combination, but there was no question that it had spread, and was still spreading very rapidly, and that, by the latest information received, acts of open violence had been committed, and blood had been shed. There was no longer any room for doubting the necessity of taking extra precautions for the preservation of peace, and with a view to allay the excitement, the Lieutenant-Governor of Bengal hoped that the measures he had taken, including the provisions of the Bill now before the Council, would be sufficient, and the Government of India had no doubt whatever in concurring with him to pass the Act.

There was one other remark suggested by a perusal of the papers on which the Bill was founded. Mr. Herschell, the Magistrate of the district in which the state of feeling had been most threatening, was, he (Sir Bartle Frere) believed, a very young man. It was only just to him to state that the papers showed he had behaved with an amount of judgment and fairness towards all parties concerned, which were highly creditable to him under circumstances by no means free from difficulty, and it was only fair to state this, as some blame had been thrown on him, which did not appear to be deserved.

The Motion was carried.

Mr. SCONCE then moved that the Bill be read a second time.

The VICE-PRESIDENT said, they were called upon rather hastily to express an opinion on this Bill. There was no doubt, however, that such a Bill, in order to be of any use, must be passed with expedition. The Honorable Member for Bengal had had the courtesy to send him (the Vice-President) a copy of the Bill that morning, and had thus afforded him an opportunity of becoming acquainted with its provisions. The Honorable Member had, he thought, made out a sufficient case so far as regarded contracts where money was advanced, but it appeared to him that the Bill did not go far enough. The Honorable Member had referred to two entirely different matters, *first*, the necessity for an enquiry with a view to the passing of a permanent law; and, *secondly*, the necessity for the immediate passing of this temporary Bill. The Honorable Member had made out a sufficient case for enquiry, but if a ryot should be able to prove that he had been compelled, by undue or illegal coercion, to accept advances and to enter into a contract, he thought it was rather hard that he should be obliged to pay five times the amount advanced to him as damages for the breach of his contract. As the law at present stood, an Indigo Planter, who made advances and furnished seed to a ryot for cultivation, had a remedy against the ryot in case of his refusal to cultivate, by resort to the ordinary Courts of Justice. The Honorable Member for Bengal had made out a sufficient case for giving the Planter summary redress, and not to leave him to the ordinary Courts, in cases in which money had been advanced. The Bill, as he said before, did not go far enough, inasmuch as it did not provide for cases where money had not been advanced. The Honorable Member, in giving his reasons for restricting the operation of the Bill to cases where advances were made, showed that, in his opinion all other cases of contracts ought to be left to the ordinary course of law. But the present was not a simple case of a single man breaking his contract, but a regular combination on the part of a body of men refusing to fulfil their engagements. He (the Vice-President) therefore thought that, when the Council were asked to pass a Bill providing a more summary redress than that now offered by the ordinary tribunals in cases where money had been advanced,

they might reasonably provide a more summary remedy as a temporary measure for the breach of such contracts where no advances had been made, or where the balances of former seasons had been treated in the same manner as advances. If sufficient cause had been shown for a temporary law to that effect, in cases where money had been advanced, it appeared to him there was as much reason shown for a temporary law in cases where money had not been advanced. The Honorable Member said, that, if money were advanced to a ryot, and he broke his contract, he should be obliged to pay five times the amount of his advance. But supposing the Planter had entered honestly, and without any coercion or intimidation, into an engagement with a ryot, and the ryot had voluntarily engaged to cultivate a portion of his land, and had received seed for the purpose of being sown on that land, he (the Vice-President) thought it would be hard to tell the Planter that, because he had not advanced any money he had no remedy, except in the ordinary Courts. If seed had been furnished to the ryot for the purposes of cultivation, it was just as much an advance as if he had received an advance of money.

The Honorable Member instanced a case where a ryot had received only eight annas out of seven rupees, which was professed to be advanced to him. But there was no doubt that the money was advanced, and it made no difference whether any portion of the advance formed part of an old account or not. Now assuming that the ryots, as free agents, had entered into engagements without any coercion on the part of the Planters, and then assuming that the ryots, as a body, had formed a combination to refuse to fulfil their engagements, it mattered little whether money was advanced to them or not. The Council was just as much justified in giving an easy remedy in the one case as in the other. Supposing that money had not been advanced, or supposing that a small sum of money were advanced, and the ryot, after voluntarily entering into an engagement without any fraud or coercion on the part of the Indigo Planter, at the last moment refused to fulfil his engagement, the Planter, he thought, would be very much embarrassed. The Planter might have made his arrangements for manufacturing the indigo, and if the ryot refused to grow his indigo, the Planter, although he might have made no advance of money, would be just as much injured as if he had advanced it. It appeared to him (the Vice-President) therefore, that the same case had been made out where money had not been advanced, as where it had been.

Again, he thought that a full remedy should be given: but was not sure that a sufficient case had been made out for rendering a ryot liable to pay five times the amount of the advance, even if he accepted it without coercion. He also thought that, when a case came before the Magistrate, if it appeared to him that coercion had been used, the case ought to be dismissed. It was not for the Council to recognise any such cases of illegal coercion, and he thought the Magistrate, in trying the case, ought to be competent to enter into the question whether the ryot had voluntarily made his engagement as a free agent, or whether coercion or improper means had been used to induce him to enter into it.

He (the Vice-President merely) made these observations, in order that, when the Bill came before a Committee of the whole Council, he might not be bound to its provisions as it now stood. He did not wish to allow the Bill to pass the second reading without reserving to himself the right, at a future stage, of moving amendments in accordance with the suggestions he had made.

MR. WILSON said, he could hardly allow this Motion to be put from the Chair without offering one or two observations. With regard to a remark which had fallen from the Chair, he (Mr. Wilson) thought we must recognise a distinction between the two cases, of where money was advanced in pursuance of a contract, and where a simple contract was entered into without any advance. He must say that, where an advance of money

was taken and the contract broken, it was a more deliberate act, and assumed rather a Criminal character, inasmuch as it really involved the question of obtaining money under a false pretence, whereas a contract entered into for the purpose of cultivating land without the payment of money was purely a Civil act. The Honorable and learned Vice-President next observed that five times the amount of the advance was rather a heavy fine, but it must be considered that that was assumed as a maximum only. The Clause provided that, if the Magistrate was satisfied as to the complaint, he should assess a certain sum as damages, but that the damages should not exceed five times the amount of the advance. The damages might be assessed at much less than five times the amount, and the Clause only provided that they were in no case to exceed that limit. The Magistrate would have only two things to consider, *first*, whether the transaction was a *bonâ fide* one, and *second*, whether there was sufficient ground to believe in the alleged breach of contract. It would be idle for us to suppose that, in each particular case, the Planter could resort to the ordinary Courts of Justice, either with regard to his own interest or those of the ryots; for the greater the delay the heavier would be the damages which the Civil Court would be obliged to award. But we should endeavor to avoid mere technicalities in an emergency like the present. He spoke for himself, for his colleagues, and for the Lieutenant-Governor of Bengal, that in proposing this Bill they had in view the interest as much of the ryot as that of the Planter. It was common, where there was a dispute between employers and employed, that it arose from misapprehension on both sides, inasmuch as it resulted to their mutual disadvantage. The poor ignorant men, however, were not so much to blame after all, for in all such cases, here as well as in England, there was invariably some under-current at work, but for which there would be no possibility of such combinations. It was not so much to the legal action of this Bill that the Government looked for a remedy of the evil which had arisen; but they regarded this Bill as a strong expression of opinion on the part of the Lieutenant-Governor of Bengal, the Government of India, and he hoped of the Legislative Council, that they viewed with extreme disfavor the occurrence of these disturbances, and therefore it was more to the moral effect of the Bill, in inducing the disaffected ryots to return to their loyalty, than to the temporary Courts to be raised for the trial of these disputes, that they looked. We ought to be extremely anxious to impress upon the minds of ryots that we were as much their friends as we were of their employers. We must tell them that they were pursuing a course which was as much injurious to themselves as to their employers, the Planters. He was not disposed to deny that the relation which existed between Planter and ryot was far from satisfactory. The Motion made by the gallant General opposite (Sir James Outram) on the part of the Government of India, sufficiently showed that they were desirous not only to see this temporary difficulty met, but to adopt measures of a lasting and permanent character which were calculated to place the relation between the Planter and the ryot on a better footing. He was sure that the Planters on the one side, and the ryots on the other, would not misapprehend the object of the Legislative Council in interfering between them. It was the duty of the Council to support the Executive Government; and it would be seen, from the documents which had been received, that some action more than usual must be taken. It was very necessary to pass a law to suppress these disturbances at the beginning. The difficulty would be greater if we attempted to do so when men's passions had got the better of their judgments. He hoped, and had every reason to believe, that the Planters themselves would consider that their permanent and lasting interests would be best consulted by a thorough investigation into the causes of this crisis with a view to apply a remedy for the future. They indeed knew that trade was a

matter of mutual interest, and unless they co-operated in carrying it out by making it advantageous to the ryots to fulfil their engagements, how impossible it would be to force cultivation out of its natural channels. We had a striking example of this in the cultivation of opium. We had seen that the plan pursued by Government had been most successful, and he need not tell then that here, as in Europe, supply must rise with the encouragement and fall with the discouragement it received. Now, as to the cultivation of opium, the price was fixed in 1838 at 3 rupees 10 annas the seer. Under that price it had rapidly increased, but subsequently Government reduced it to Rs. 3-8 with a view of checking production. The price in 1850 was reduced from Rs. 3-10 to 3-8, but that made no perceptible difference, and in 1854 the price was reduced to Rs. 3-4, and the consequence was that cultivation rapidly decreased until last year, when it was only one-half of what it was in former years. The ryot was a free agent, and being at liberty to cultivate what yielded him a better income, he naturally turned his attention to that. The Government again increased the price of opium to Rs. 3-8, and there was little doubt that the supply would soon be as great as it had been in former years. He only mentioned this circumstance to show that the immutable law of supply and demand governed these transactions as it did those of trade generally. He (Mr. Wilson) thought, when this Bill came into operation, the temporary difficulty now felt would vanish, while the appointment of a Commission, as proposed, would throw a great deal of light on the subject. It was most desirable, if possible, to devise a plan which would, in a measure, satisfy all parties. It would not do to deprive the ryot of that freedom of cultivation which was his right, nor on the other hand could Government, considering the large destruction of property that had taken place or was being threatened, refuse protection to the planting interests. That interest could not be abandoned without the greatest injury to the ryots themselves, considering the large amount of capital that through indigo operations had been expended in the country, and considering the benefits those operations had conferred upon the country.

THE VICE-PRESIDENT said, he was afraid the Right Honorable Gentleman had misunderstood his remarks as regarded the provision mentioned by the Honorable Member for Bengal, of making the ryot liable to a penalty only in cases where money had been advanced. What he meant to say was that he would wish that a remedy should be provided for all contracts, whether money had been advanced or not.

The Motion was then put and carried, and the Bill read a second time.

KOONCH AND CALPEE.

MR. HARINGTON moved the second reading of the Bill "to remove the Pergunnahs of Koonch and Calpee in Zillah Jaloun from the operation of the general Regulations."

The Motion was carried and the Bill read a second time.

ESCAPED OFFENDERS.

MR. HARINGTON moved the second reading of the Bill "to amend Act V of 1858 (for the punishment of certain offenders who have escaped from jail, and of persons who shall knowingly harbour such offenders."

The Motion was carried and the Bill read a second time.

STAMP DUTIES.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to consolidate and amend the law relating to Stamp Duties," the Council resolved itself into a Committee for the further consideration of the Bill.

THE CHAIRMAN moved that the Clerk of the Council be requested to read the Petition of the British Indian Association, which had this day been presented.

The Motion was carried, and the Petition read accordingly.

The postponed Section IX was passed after an amendment.

Section XII, as amended last Saturday, provided as follows :—

"Except as otherwise provided by this Act, no deed, instrument, or writing for which such duty shall be payable under Section II of this Act shall be received as creating, transferring, or extinguishing any right or obligation, or as evidence in any civil proceeding in any Court of Justice, whether established by Royal Charter, or shall be registered in any public office, or authenticated by any public officer, unless such instrument or writing be upon a stamp of a value not less than that indicated to be proper for it by the said Schedule."

Mr. SCONCE moved the addition of the following proviso taken from the English Act :—

"Provided that every deed, instrument, or writing liable to Stamp Duty shall be admitted as evidence in any criminal proceeding, although it may not have the stamp required by law impressed thereon or affixed thereto."

The Motion was carried, and the Section, as further amended, then passed.

Clause 1, Section XIII (which provided that deeds, instruments, or writings inadvertently executed on unstamped or insufficiently stamped paper might be stamped on payment of penalty) was passed after the insertion of words requiring payment of the proper amount of Stamp Duty, as well as of the penalty, and with the addition of the following proviso :—

"Provided always that the payment of such penalty shall exempt the person making the same from any other penalty provided by this Act for such neglect or omission ; and that if any such other penalty shall already have been imposed, then the same shall be taken as far as it goes in reduction of any penalty arising under this Clause."

Clause 2 of the same Section (which prescribed the penalty to be imposed, if deeds, &c., inadvertently executed on unstamped or insufficienly stamped paper were brought to be stamped within thirty days of execution, and the penalty to be enforced, if brought within three months of execution, or six months of commencement of Act) was passed (among other amendments) after the addition of words prescribing the penalty to be imposed, if deeds, &c., inadvertently executed as aforesaid were not brought to be stamped within the two periods last mentioned.

Clause 3 provided as follows :—

"If the party be unable to satisfy the Collector or the Board or other superior authority as aforesaid, that the execution of the deed, instrument, or writing on paper not duly stamped proceeded from accident, ignorance, inadvertence, mistake, or other cause exempt from suspicion of evasion, the party shall, provided the deed, instrument, or writing be voluntarily brought within three months from the date of execution thereof, be entitled to have the prescribed stamp affixed on payment of a penalty equal to ten times the value, and the decision of the Board or Officer aforesaid, whether declaring the paper liable or not liable to suspicion of evasion, shall be conclusive and final."

Mr. HARINGTON moved the omission of the above Clause and the substitution of the following :—

"It shall be the duty of the Collector of the Stamp Revenue of the District, or other Officer as aforesaid, to determine whether upon payment of the penalties mentioned in the last preceding Clause, the requisite stamp shall be impressed on any deed, instrument, or writing which shall have been executed on unstamped or insufficiently stamped paper, and the decision of the Collector shall be conclusive and final, except in cases in which he shall refuse to allow the deed, instrument, or writing to be stamped. The Board of Revenue or other general controlling revenue authority may, however, upon petition, order such penalty to be mitigated, and if paid, may order such part of it as they may consider proper to be returned."

Agreed to.

The CHAIRMAN moved the insertion of the following new Clauses after the above :—

"Sections 130 and 131 of Act VIII of 1859 are hereby repealed, and in lieu thereof it is enacted as follows :—In all cases under this Act, in which a Collector may impress a stamp on payment of the proper amount of Stamp Duty and a penalty, any Civil Court may receive in evidence any deed, instrument, or writing which might be so impressed on payment, into Court, of the proper amount of Stamp Duty and the penalty as by this Section imposed.

"An entry of such payment and of the amount thereof shall be made in a book to be kept in the Court, and shall also be

endorsed on the back of the deed, instrument, or writing, and shall be signed by a Judge of the Court. The Court shall, at the end of every month, make a return to the Collector of the Stamp Revenue of the District of the monies (if any) which it has so received, distinguishing between the monies received by way of penalty and those received by way of Duty, stating the number and title of the suit, and the name of the party from whom such monies were received, and the date, if any, and description of the document, for the purpose of identifying the same, and the Court shall pay over the said monies to such Collector or to such person as he may appoint to receive the same. And such Collector or other proper authority shall, upon the production of the deed, instrument, or writing, with the endorsement hereinbefore mentioned, cause it to be stamped thereon with a stamp of the amount paid into Court on account of such duty. All the provisions hereinbefore contained as to the mitigation or repayment of penalties paid to the Collector shall be applicable to penalties paid into Court."

The Clauses were severally carried, and the Section as amended then passed.

Section XIX, as amended last Saturday, empowered the Governor-General in Council, by an order, to direct the levy of lower rates of Stamp Duty in any District, or altogether to exempt them, except as regarded Bills of Exchange or other instruments classed as Bills of Exchange.

MR. FORBES moved an amendment, authorizing the Governor-General in Council, as occasion required, to cancel or vary such order to the extent of the powers given by the Section.

The Motion was carried, and the Section, as further amended, was then passed.

MR. SCONCE moved the addition of the following new Section :—

"This Act shall come into force from the 1st of September 1860."

He said that, instead of giving the Government of India the power of fixing the date from which the Act should come into force, as was agreed last Saturday, he thought it better that the Act itself should fix the date of its commencement.

The Section was agreed to.

Schedule A specified the instruments and writings which would require stamps, and indicated the proper stamps for those instruments and writings.

Article 1 was passed as it stood.

Article 2 (relating to affidavits and solemn declarations not made for the purpose of being filed, read, or used in any Court of law,) contained the following exemption :—

"Affidavits required before grant of probate, letters of administration, &c."

SIR CHARLES JACKSON moved the omission of the exemption.

Agreed to.

Article 3 (relating to assignments, if not of the nature specified under the heads of Conveyances and Settlements, nor specially exempted) was passed with the addition of the following exemption :—

"All transfers by mere endorsement of Bills of Exchange, Promissory Notes, and other negotiable instruments; Bills of Exchange, and transfers by assignment of Policies of Assurance."

Article 4 (relating to Bills of Exchange and other obligations for the payment of money, not being bonds or instruments or writings bearing the attestation of one or more witnesses,) was passed after verbal amendments.

Article 5 was passed as it stood.

Article 6 was passed after a verbal amendment.

Article 7 was passed as it stood.

Article 8 was passed after amendment, and subject (on the recommittal of the Bill) to the substitution, if necessary, of an *ad valorem* Stamp Duty for the present graduated scale.

Articles 9 to 15 were passed after amendments.

Articles 16 to 18 were passed as they stood.

Article 19 was passed after the omission of the exemption "all transfers by mere endorsement of Bills of Exchange, Promissory Notes, and the like," provision for which had been included in the exemption added to Article 3.

Articles 20 to 39 were passed as they stood.

Article 40 prescribed a graduated scale of stamps for partitions, conclud-

ing with Rs. 8 if the sharer's portion exceeded Rs. 800, but did not exceed Rs. 1,000, "and for every additional Rs. 800 or part thereof .....Rs. 8."

MR. WILSON moved the omission of the words quoted, and the substitution for them of the words "and for every additional Rs. 200..... 1 Rupee."

After some discussion the Council divided :—

Ayes 4.	*Noes* 3.
Mr. Sconce.	Sir Charles Jackson.
Mr. Wilson.	Mr. Forbes.
Sir Bartle Frere.	Mr. Harington.
The Chairman.	

So the Motion was carried.

Articles 41 to 44 were passed as they stood.

Article 45 was passed after a verbal amendment.

Articles 46 and 47 having been passed as they stood, the Schedule, as amended, was agreed to.

Schedule B contained the specification of Stamp Duties chargeable on law papers.

Articles 1 and 2 were passed as they stood.

Article 3 was passed after a verbal amendment.

Article 4 (relating to mooktearnamahs,) contained the following exemption :—

"Mooktearnamahs executed by Native officers or soldiers of the Native Army, regular or irregular.

On the motion of Mr. Harington an amendment was carried, which made the exemption stand as follows :—

"Mooktearnamahs executed by officers or soldiers of the Army."

Article 5 provided as follows :—

"Petitions, applications, or written statements presented in regular suits under the provisions of Act VIII of 1859 or otherwise, in any matter, to any Civil Court, if the subject matter of the suit or case does not amount to Rs. 50, may be written on plain paper.

"If the subject matter of the suit or case amount to Rs. 50, or be not capable of being valued, the petition, application, or statement shall be written on stamp paper of the following value :—

When presented in any Court below the Sudder Dewanny Adawlut	0	8
When presented in the Sudder Dewanny Adawlut	2	0

SPECIAL RULE FOR BENGAL.

Petitions or applications presented in any Zillah Court or Office, Criminal or Revenue	0	8
Petitions or applications presented to the Nizamut Adawlut, or to the Board of Revenue, or of Customs, Salt and Opium	2	0

MR. HARINGTON moved to substitute the following for the above :—

"Petitions of appeal not being from an order rejecting a Plaint, or from a decree or order having by any law the force of a decree; petitions or applications presented to any Civil Court in relation to any matter cognizable by such Court, shall be written upon stamp paper of the following value, namely :—

When presented to the Sudder Court...	2	0
When presented to any Court below the Sudder Court	0	8

SPECIAL RULE FOR BENGAL.

Petitions or applications presented to the Nizamut Adawlut, or to the Board of Revenue, or Customs, Salt and Opium.....	2	0
Petitions or applications presented to any other Criminal Court, or to any other Revenue Office.....	0	8

GENERAL EXEMPTIONS.

Petitions or applications presented to any Moonsiff's Court in relation to any suit or case of an amount or value less than Rs. 50.

Applications for the summons of a witness or other person to attend, either to give evidence or to produce a document, or in respect of the production or filing of any exhibit."

Agreed to.

Article 6 related to Plaints. After other amendments—

MR. HARINGTON moved the addition of the following note :—

"*(f)*. If an appeal or plaint which shall have been rejected by the lower Court on any of the grounds mentioned in Act VIII of 1859 shall be ordered to be received, or if a suit shall be remanded in appeal for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of Stamp Duty paid on the petition of appeal.

He said, a great object aimed at in framing the new Code of Civil Procedure was to prevent, as far as possible, the remand of suits in appeal, with a view to their being decided anew by the Court of first instance. The number of remands under the old Code was very large, and the consequence was that the final disposal of cases was often delayed for very considerable periods, and the parties were subjected to heavy additional costs. To remedy this, the new Code provided that no suit should be remanded in appeal if the materials were at hand from which the Appellate Court could itself come to a decision. There could be no doubt that, in this respect, the new Code was a great improvement upon the Code which it superseded, but cases would occasionally occur in which the Court would find it impossible to avoid a remand, and in such cases it appeared to him (Mr. Harington) that the amount of Stamp Duty paid by the appellant upon the petition of appeal should be refunded to him. This was the present practice, and there seemed no good reason why it should not be continued. The same remark applied to cases in which the plaint had been rejected by the Court below for want of jurisdiction or under the Statute of limitations, but in which the Appellate Court in appeal ordered the plaint to be received and tried. In cases of this nature the order of rejection would usually be passed before the defendant was even summoned, and as the error would be entirely that of the Court of first instance, it would be hard to charge either of the parties with the Stamp Duty paid on the petition of appeal which, under an amendment which had been adopted that day, would be the same as that paid on the petition of plaint.

After some discussion, the Council divided :—

Ayes 3.	*Noes* 4.
Mr. Sconce.	Sir Charles Jackson.
Mr. Forbes.	Mr. Wilson.
Mr. Harington.	Sir Bartle Frere.
	The Chairman.

So the Motion was negatived.

Mr. Harington

Article 7 having been passed as it stood, the Schedule as amended was agreed to.

MR. SCONCE moved that the Bill be reprinted.

Agreed to.

The Council then resumed its sitting.

POSTPONED ORDERS.

The Orders of the Day for Committees of the whole Council on the following Bills were postponed till Saturday next :—

Bill "relating to the Emigration of Native Laborers to the British Colony of St. Vincent."

Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of Furruckabad."

Bill "to provide for the execution of processes within the precincts of the residence of His Majesty the King of Oude."

Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on boats, rafts, and floats passing through the Circular and Eastern Canals)."

Bill "to amend Act XIV of 1856."

KOONCH AND CALPEE.

MR. HARINGTON moved that the Bill "to remove the Pergunnahs of Koonch and Calpee, in Zillah Jaloun, from the operation of the general Regulations" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

ESCAPED OFFENDERS.

MR. HARINGTON moved that the Bill "to amend Act V of 1858 (for the punishment of certain offenders who have escaped from jail, and of persons who shall knowingly harbour such offenders)" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

MR. HARINGTON moved that the Standing Orders be suspended, in order that he might move an instruction to the Select Committee which had just been appointed, to present their Report within a week.

Agreed to.

MR. HARINGTON then moved that the Committee be instructed to present their Report within a week.

Agreed to.

COTTON FRAUDS (BOMBAY).

MR. FORBES (in the absence of Mr. LeGeyt) moved that the Report of the Select Committee on the Bill "for the better suppression of frauds in the Cotton Trade in the Presidency of Bombay" be adopted.

Agreed to.

The Council adjourned.

Saturday, March 31, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,
Hon. Sir H. B. E. Frere,
Right Hon. J. Wilson,
P. W. LeGeyt, Esq.
H. B. Harington, Esq.,
H. Forbes, Esq.,
Hon. Sir C. R. M. Jackson,
and
A. Sconce, Esq.

ABSENCE OF THE GOVERNOR-GENERAL.

THE VICE-PRESIDENT read the following Message from the President in Council:—

MESSAGE No. 206.

The President in Council informs the Legislative Council that the Governor-General has represented that it is expedient that he should be enabled to prolong his absence from the Presidency for a further period of three months.

By order of the President in Council.

W. GREY,
Secretary to the Govt. of India.

Fort William, the 27th March 1860.

SIR BARTLE FRERE moved that the Standing Orders be suspended, to enable him to introduce and proceed with a Bill to extend the operation of Act XXI of 1859, providing for the exercise of certain powers by the Governor-General during his absence from his Council.

SIR JAMES OUTRAM seconded the Motion, which was put and carried.

INDIGO CONTRACTS.

THE CLERK presented a Petition purporting to be signed by certain ryots and others in the Districts of Nuddea and Jessore; and he certified that he had received the same in a blank envelope, and that the signatures were those of marksmen, and were not authenticated.

THE VICE-PRESIDENT observed that, according to the Standing Orders, this Petition could not be received by the Council except upon the motion of a Member.

MR. SCONCE moved that the Petition be received, and said that he proposed, when the Council resolved itself into a Committee upon the Bill, to move that the Petition be read.

Agreed to.

JUDICIAL OFFICERS.

THE CLERK presented a Petition from Messrs. Crisp and Co. of Rangoon, and certified that it was a complaint respecting the decision of a Judicial Officer.

THE VICE-PRESIDENT observed that, as the Petition did not relate to any matter connected with the business of the Council, it could not, according to the Standing Orders, be received.

INDIGO CONTRACTS.

THE CLERK presented to the Council a Petition from the Indigo Planters' Association, concerning the Bill "to enforce the fulfilment of Indigo Contracts."

MR. SCONCE said, when the Council went into Committee on the Bill, he proposed to move that this Petition also be read.

THE CLERK presented a Petition from the British Indian Association concerning the same Bill.

MR. SCONCE said, he would adopt the same course with respect to this Petition.

INCOME TAX.

THE CLERK presented a Petition from Clerks employed in Government

and other Offices in Calcutta against the proposed levy of a tax on various incomes.

PARSEES.

MR. LEGEYT said, he held in his hand a document of great interest and importance. It was a Petition from the Parsee community of Bombay to this Council, praying for the enactment of a Code of laws by which their right in matters of inheritance and succession, the rights of married women, the rights and relations of parent and child, guardian and ward, might be authoritatively settled.

The petitioners had set forth, at some length, the history of this movement in their tribe. They showed that they had been residents in India since A. D. 727, and although they had adopted the language, and in many respects the habits of the country, they had with much care and jealousy preserved the ancient customs and usages of their own people as handed down to them in their old writings and traditions. Unlike the Hindoos and Mahomedans, these customs had never been passed into a Code of laws. The comparatively limited number of the Parsee community and their patriarchal institution of the Punchayet, by which all domestic relations were regulated for many centuries, rendered legislation unnecessary. It was not until the middle of the eighteenth century that any material interruption to this happy state of things appeared to have been experienced. In 1777 an appeal was made to the Government of Bombay to strengthen the power of the Punchayet which had begun to be disregarded. Partial remedies were afforded, but things seemed to have gone on from bad to worse, and several spasmodic but ineffectual attempts to uphold the Punchayet were made from time to time. In the meanwhile disputes on inheritance, on marriage, and on succession were taken into the Supreme Court and decided, in the absence of any special law, according to the principles of English law. This was objected to by the petitioners. He (Mr. LeGeyt) would read that part of the petition which contained the objection:—

"Your petitioners need hardly suggest to your Honorable Council that the laws which are in force in England, upon the subjects above particularly mentioned, although they are productive of happiness and security to the English people, are but ill adapted to the wants and requirements of the Parsees, who entirely differ in manners, customs, and usages from those for whose benefit and protection such laws were framed. The application of English law in such cases has frequently, although in the present state of things unavoidably, been productive of much hardship to individuals, and of great dissatisfaction among the Parsee community in general. Furthermore, it has been decided on the 17th July 1856, by the highest Court of Indian appeal, namely, by the Right Honorable the Judicial Committee of the Privy Council, in England, in the case of Peerozebaie Ardaseer Cursetjee Dady, that in matters affecting marriage and conjugal rights the Supreme Court in Bombay does not possess any power to exercise jurisdiction over your petitioners and their co-religionists, and consequently in all cases relating to marriage, divorce, and the restitution of conjugal rights the Parsees are destitute of any remedy whatever which can be legally enforced. The Parsees consequently feel that they, as a race, are debarred from the secure enjoyment of the laws, usages, and customs pertaining to them, and which they apprehend it was intended by the Legislature should be even guaranteed to them in like manner as the laws, usages, and customs of the Mahomedans and Gentoos were recognised as rights to be enjoyed by those races respectively."

The petitioners traced out all that had been done by themselves and by the Government to obtain redress, and that the only successful result of their endeavors had as yet been the passing in 1837 of Act IX of that year, which declared that the immoveable property of a Parsee dying should be dealt with in the same manner as chattels, and by which all attempt to enforce the English law of primogeniture was defeated.

In 1855 an important meeting of the community was held. He would read from the petition as to what had been done on that occasion—

"That, on the 20th August 1855, a public meeting of the Parsees of Bombay was held, at Sett Cowasjee Byramjee's Fire Temple, which was attended by the heads of the Parsee community, as well as by a great number of respectable and influential gentlemen, at

which the following resolutions were unanimously agreed to:—

"That this meeting is deeply impressed with the necessity of procuring for the Parsee community the enactment of laws adapted to that tribe, such as may be recognised, obeyed, and enforced by the local authorities and Courts of Justice.

"That a Managing Committee, composed of the following gentlemen, be appointed to prepare a draft of a Code of Laws adapted to the Parsee nation, to petition the Legislative Council of India for the enactment of such laws, and to manage and conduct all affairs relating thereto, and that the Committee be empowered to add to their number and to appoint their Secretary. A copy of the minutes of the proceedings of the said meeting is herewith annexed.

"That your petitioners represent the Managing Committee above referred to, and which comprises the heads of all influential Parsee families, as well as other gentlemen representing the different classes of the Parsee community in Bombay.

"That during the period of four years and upwards, which has elapsed since the appointment of your petitioners as members of such Committee, your petitioners have been constantly engaged in the performance of the duty entrusted to them by their community."

Again, in paragraph 5, the petitioners state:—

"That by means of such enquiries and researches your petitioners became possessed of sufficient information to enable them to frame the draft of a Code of laws on the above-mentioned subjects, applicable to their co-religionists. Each section of such Code was fully and patiently discussed at the meetings of the above-mentioned Committee, and due publicity was given to all such proceedings by the publication thereof, from time to time, in the Guzerattee newspaper.

"The draft Code of laws, applicable under the before-mentioned points to the Parsee community, has now been settled, and is hereunto appended; and your petitioners humbly pray your Honorable Council to pass the same into law."

He (Mr. LeGeyt) would not take up the time of the Council by reading the whole of the petition and the details which were given to illustrate its prayer. He did not, however, feel that matters were yet sufficiently matured to justify the Council in bringing in a Bill passed in conformity with the prayer. He entirely concurred in the justice and the necessity of the measures. But there was a point which should, he thought, require further examination and enquiry. It was very important that, in a movement of this kind, there should be unanimity among the people who were affected by the proposed law. He would read one more paragraph of the petition:—

"It had been the earnest hope of your petitioners to have been able to propose one uniform Code of Laws, which should be applicable to Parsees residing in all parts of India, but some of their co-religionists, residing at Surat and elsewhere, resolutely object to allow the widow and daughters to inherit any portion of the property left by an intestate Parsee, deceased, and would only allow them a bare maintenance. These Parsees also deny the right of a person absolutely to disinherit his male heirs; but neither of these objections at all arise from such powers of inheritance, and disinheriting being opposed to the ancient laws and customs of the Parsees. The opposition really arises from the fact that the Parsees in the interior have in certain matters adopted the usages and customs of the Hindoos, and to them pertinaciously adhere, and not having as yet fully experienced the benefits of a liberal education, they persist in their views, though prejudiced and narrow. The Parsees of Bombay who, even numerically speaking, far exceed those of the Mofussil, do not admit the validity of the objections just mentioned, and therefore following the precedent of the Parsee's real Property Act No. IX of 1837, they have proposed and now solicit your Honorable Council to enact the accompanying Code so as to affect Parsees residing within and subject to the jurisdiction of Her Majesty's Supreme Courts in India, leaving it to the wisdom of your Honorable Council to extend its provisions to the Parsees of the Mofussil."

It was true the petitioners only demanded legislation for that section of the community who were agreed, and it was also true that that section formed a large majority of the numbers and wealth and intelligence of the tribe; but it was tolerably evident that the chief obstacle to the passing of a law, such as was now prayed for, had hitherto been the want of unanimity of a people who professed to be governed by the same laws and to derive them from the same source. The petitioners, declared their researches had satisfied them that their usages, and that the laws they now asked were in conformity with the ancient usages of their race. Still as there was a difference of opinion, he thought a further enquiry was desirable. The inconvenience of a

special law for a Parsee residing within the limits of the Supreme Court of a Presidency Town differing materially from the law by which a Parsee residing on the other side of the boundary was governed, should be avoided. If it were found that the law asked for were unobjectionable to themselves, and were really in conformity with the ancient usage of the tribe, and the contrary could not be shown by the objectors, and if it be ascertained that the objectors were really the innovators, and had adopted the principles of Hindoo law, then he thought the voice of the majority should be respected, and the law prayed for might be passed under that view of the case. His intention was to move that the petition be printed and referred to a Select Committee, with instructions to institute such enquiries as might be necessary to satisfy them whether the subject was one which required legislation, and whether the legislation proposed by the petitioners, or any other, be the most advisable; and, in order that the enquiry might be effectual, that the Committee be authorized to issue Commissions for the purpose of taking evidence, and that the Commissioners be authorized to take such evidence in the manner provided by Act VIII of 1859 for the taking of evidence by Commissioners.

He would move that the Select Committee consist of Sir James Outram, Sir Bartle Frere, Sir Charles Jackson, and the Mover, with instructions to report within three months from that date.

The Motion was put and agreed to.

LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

MR. FORBES (in the absence of Sir Charles Jackson) postponed the presentation of the Report of the Select Committee on the Bill "for the Registration of Literary, Scientific, and Charitable Societies."

ESCAPED OFFENDERS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act V of 1858 (for the punishment of certain offenders who had escaped from jail, and of persons who shall knowingly harbor such offenders)." In doing so he said, that it was not his intention to proceed with it further on that day, but gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill.

PORT-DUES.

MR. FORBES presented the Report of the Select Committee on the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues."

EMIGRATION TO ST. KITTS.

SIR BARTLE FRERE, in proposing the first reading of a Bill "relating to the emigration of native laborers to the British Colony of St. Kitts," stated that it was, *mutatis mutandis*, identical with a Bill now before the Council for regulating emigration to the Colony of St. Vincent.

It was at first his impression that it would be advisable to deal with the subject of emigration by a general law applicable to all Colonies, but it appeared on enquiry that, inasmuch as the several Colonies acted independently of each other in the matter of emigration, and required different rules, owing to local differences of climate and length of voyage, &c., it was the preferable course to deal with them in this matter independently, and pass for each Colony a Bill as might be required to meet its peculiar requirements.

As there was no new feature in the present Bill, he would not detain the Council farther by describing its provisions.

The Bill was read a first time.

ENDOWMENTS.

SIR BARTLE FRERE, in rising to move the first reading of a Bill "to repeal Regulation XIX. 1810 of the Bengal Code, and Regulation VII. 1817 of the Madras Code," said that the Bill was brought in, in compliance with instructions from the Secretary of State, and he could

not better state the reasons on which the Bill was founded than by reading extracts from the Secretary of State's Despatch on the subject which would be laid before the Council. In a Despatch, dated 24th February 1859, Lord Stanley observed as follows:—

"The severance of all connection between the offices of Government and the religious institutions of the Natives has formed the subject of correspondence between the Government of India and the authorities of England for several years, and it has been recognised as a principle of the greatest importance that, in every thing connected with their religious worship, and with the management of these religious endowments, the people of India should be left entirely to themselves.

"In the year 1844 enquiry was directed to be made in the Presidencies of Bengal and Madras, for the purpose of ascertaining the extent to which the management of endowed lands was in the hands of Government Officers. On that occasion the Court of Directors expressed their desire that the Regulations of the Bengal and Madras Codes, by which the general superintendence of all endowments in land or money granted for the support of mosques and temples is vested in the Revenue Officers of Government, and the rules which required any of the European Officers to interfere in the management of the funds and affairs of any such institution, might be rescinded.

"Again, in their letter in the Legislative Department, No. 1, dated 7th January 1846, the Government of India, after reviewing the subject with reference to the connection then existing in the several Presidencies of India between its Officers and the religious institutions of the people, recorded their opinion that Regulation XIX. 1810 of the Bengal Code, and the Regulation VII. 1817 of the Madras Code should be repealed.

"Respecting the degree of protection to be afforded to the religious institutions of the people of India, the sentiments of Her Majesty's Government are essentially those of the Court of Directors as above referred to. It is the duty of the Government of India to see that those institutions "enjoy the equal and impartial protection of the law," but it is not called upon to provide specially for their management or superintendence by its own officers. It appears, then, to Her Majesty's Government that the repeal of the Regulations in question, or such parts of them as relate to the management of religious endowments, should no longer be delayed; provision being made at the same time for an appeal to the established Courts of Justice in all disputes relating to the appointment and succession to the management of Hindoo and Mahomedan religious institutions, and to the control and applications of their funds. I request that you will take the necessary steps for bringing the subject under the consideration of the Legislative Council."

The two enactments which it was intended by this Bill to repeal were, he (Sir Bartle Frere) believed, the only two remaining on the statute book to which the remarks of the Secretary of State applied, and their repeal would completely carry out the object which the Home Government had so long in view.

The Bill was read a first time.

ARTICLES OF WAR (NATIVE ARMY).

SIR BARTLE FRERE, in moving the first reading of a Bill "for the further amendment of the Articles of War for the Native Army," observed that it was not necessary he should enter at any great length into the reasons for amending the existing Articles of War for the Native Army, as they had been very lately and fully stated by his Honorable friend on his right (Mr. Harington) in bringing forward a Bill which had been passed with special reference to the requirements of the force proceeding to China. It would be in the recollection of the Council that it was then stated by the Honorable Member for the North-Western Provinces, that a general measure applicable to the whole of the Native Army was in contemplation, and would be brought forward as speedily as possible, and the Bill, the first reading of which he (Sir Bartle Frere) had now the honor to propose, was the measure to which his Honorable friend then referred. With reference to the large amount of business before the Council for that day, he (Sir Bartle Frere) would not detain them by any lengthened explanation of the new provisions of the Bill, or the reasons for them. He would reserve such statement for the second reading, when the Bill would be printed and would be in the hands of Honorable Members. He would simply state that the general tendency of the changes proposed was to give a larger discretion, and to place a larger amount of authority in the hands of Commanding Officers, a subject on which he (Sir Bartle Frere) believed that the opinions of all the best

informed authorities were very unanimous.

MR. FORBES wished to know if the Honorable Member proposed to proceed with the Bill to-day under a suspension of the Standing Orders, because on the last occasion of a similar Bill being brought in, although he (Mr. Forbes) had received two communications from Madras, containing the views of the Commander-in-Chief upon the measure, he had had no opportunity of presenting them to the Council, owing to the Bill having been passed under a suspension of the Standing Orders before the communications reached him. As he thought it inexpedient that further change should be effected without the opinion of the Chief of each Army being ascertained, he would ask the Honorable Member as to whether it was intended to proceed with the Bill to-day by suspending the Standing Orders.

SIR BARTLE FRERE replied that there was no such intention. The Commander-in-Chief in India had expressed a wish that no avoidable delay should occur in passing into law the measure which had received His Excellency's approval, but that ample time would be allowed to consult the Commanders-in-Chief of the Madras and Bombay Armies, and to ascertain their views. The Bill, as drawn up by the Judge Advocate General with Lord Clyde's approval, had been already sent to them, and it was hoped that their opinions would be received before the second reading of the Bill.

The Bill was then read a first time.

ABSENCE OF THE GOVERNOR GENERAL.

SIR BARTLE FRERE, acting on the permission of the Council to suspend the Standing Orders after hearing the Message from the President in Council read, moved the first reading of a Bill "to continue in force for a further period of three months Act XXI of 1859, for providing for the exercise of certain powers by the Governor-General during his absence from his Council." Act XXI would expire on the 9th May, and his Lordship would not have concluded his tour till the end of April. It was then his wish to remain in the North-West till the setting of the rains before his return to Calcutta. In the North-West Provinces and Punjab, which His Excellency had lately visited, there was but one opinion as to the immense benefit which had resulted from the Viceroy's visit, and he (Sir Bartle Frere) felt certain that the Council would concur unanimously in giving effect to his Lordship's wish that the Act should be extended for another period of three months.

The Bill was read a first time.

SIR BARTLE FRERE then moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

INCOME TAX AND LICENSING OF ARTS, TRADES, AND PROFESSIONS.

MR. WILSON postponed till Saturday next the Motions (which stood in the Orders of the Day) for the second reading of the Bill "for imposing Duties on profits arising from property, professions, trades, and offices," and the Bill "for the licensing of arts, trades, and professions."

INDIGO CONTRACTS.

THE VICE-PRESIDENT moved that the other Orders of the Day be postponed until after the consideration of the Bill "to enforce the fulfilment of Indigo Contracts."

Agreed to.

MR. SCONCE then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

MR. SCONCE moved that the Clerk be requested to read the petitions concerning the Bill which had that day been presented to the Council.

The Motion having been carried, the Petitions were read accordingly.

Section I provided as follows:—

"If any person who has received a cash advance upon his agreement to cultivate indigo plant during the season now current shall wilfully delay or omit, from and after the 24th day of March 1860, to cultivate according to the conditions of his agreement, the whole quantity of land which he has

agreed to cultivate, and for the cultivation of which the cash advance was made, it shall be competent to the Magistrate to entertain a complaint made to the above effect on oath by the planter who has made the advance, or by any person in his behalf, and to summon the person complained of to appear before him, in order to the investigation of the complaint preferred. If the Magistrate has reason to believe that the person complained of will not appear in obedience to the summons, he may issue a warrant for the arrest of such person."

Mr. WILSON said, he had a slight alteration in this Section to suggest to the Committee. As he understood, the object of this Bill was to compel the fulfilment of contracts in which a cash advance of any amount had been received. He did not understand that the cash advanced was an essential ingredient in the contract. What he understood was that a cash advance was an earnest of a contract deliberately made by the parties. Whether the advance was made in full, or whether it consisted in part of an arrear of last year, was not to the purpose. It appeared to him that the real question for consideration was the quantity of land agreed to be cultivated. The agreement was specific as to this point, and the contract would not be fulfilled unless the whole of the land specified in the agreement should be cultivated. And, therefore, as the Clause stood, it would not bear that legal interpretation, for there were words in it which would give rise to considerable difficulty which it was our duty to remove. The Clause provided that:—

"If any person who has received a cash advance upon his agreement to cultivate indigo plant during the season now current shall wilfully delay or omit, from and after the 24th day of March 1860, to cultivate, according to the conditions of his agreement, the whole quantity of land he has agreed to cultivate, *and for the cultivation of which the cash advance was made, &c., &c.*

The words in italics he thought might lead to an impression that a ryot was compelled to cultivate only that portion of the land for which he had received an advance. Now the intention of the Council was that the ryot should be obliged to fulfil his contract, whatever the amount of the cash advanced to him might be, and therefore, to make the Clause quite clear, he proposed to move to leave out the words in question, and to substitute the words "*such* agreement" for "*his* agreement." He would accordingly move the substitution of the word "*such*" for "*his*."

The CHAIRMAN said, he had an amendment to move in an earlier part of the Section. He had proposed to leave out the words "who had received a cash advance upon his agreement to cultivate indigo plant during the season now current." But as the Right Honorable Member's amendment would have nearly the same effect, and do all that was necessary, he would now simply move to substitute the words "31st day of March" for "24th day of March." It appeared to him that it was not right to pass an *ex post facto* law of this nature. He had no objection to indemnify the Officers of Government for any acts already done by order of the Lieutenant-Governor, which would have been authorized by this Bill if it had been passed as it was read a second time. But he did not think it right to give any Officer power to act under the authority of the Act in respect to past offences. For instance, supposing a case were pending before an Officer in respect to an offence committed on the 25th March, the Magistrate was bound to decide upon the construction of the Act, according to Section II of which he might, in the event of non-payment immediately of the damages assessed, order the defendant to be imprisoned in the civil jail for a term not exceeding three months. It appeared to him (the Chairman) that, if nothing had been done during the past week, the Magistrate should not have this power with regard to an offence committed between the 24th and 31st March. He, therefore, proposed to substitute the 31st for the 24th March, and to introduce an indemnity Clause with regard to acts done before the 31st March.

Mr. SCONCE said, he had no objection to offer to the proposition of the Honorable and learned Chairman, on the understanding that the indemnity

would provide for all acts done under the instructions which had already been given to the local Officers within this week.

MR. WILSON said, he thought we must consider well what we were doing in this matter. It appeared to him that the Honorable and learned Chairman's objection would not be fully carried out by his proposed amendment, because the Bill would not receive the Governor-General's assent for some time to come, and in point of fact, the Bill would be as little law to-day as it was last week. If the motion were made last Saturday, he should have most cheerfully assented to it: but by the Bill of last week we had authorized the Lieutenant-Governor of Bengal to act upon it as if it had been law. It was very necessary to know what steps had already been taken on the faith of the Bill as if it were to have had effect from the 24th March. As he had already stated, he would have had no objection if the proposal of the learned and Honorable Chairman had been made last Saturday, but he thought it was too late to adopt it now that authority had already been given to the Lieutenant-Governor. If the indemnity would cover the whole of the acts of the week, the object of the amendment would be frustrated; whereas if it did not, the effect of the amendment would be very much like entrapping the Lieutenant-Governor into the issue of orders which the Council subsequently thought fit to repudiate. Therefore it was not to the principle of the amendment that he (Mr. Wilson) objected, but to the practical inconvenience which would result from its adoption, and he would therefore suggest to the Honorable and learned Chairman, inasmuch as the purpose of his amendments would not be effected, whether it would not be advisable to withdraw his objection to the Clause as it now stood, on the ground of *ex post facto* legislation.

THE CHAIRMAN said, if this Bill had gone through the ordinary course and been referred to a Select Committee, it would have been published in the Gazette; but the Honorable Member for Bengal did not think it proper to refer the Bill to a Select Committee. He (the Chairman) had no objection to the substitution of the words "from the publication of the Act" for those before proposed by him. If the public had been informed last week that from such a date the Act would take effect, he would have had no objection. The Bill might be published to-night as a Bill passed by the Council, and merely awaiting the assent of the Governor-General. The indemnity Clause would protect the Officers of Government for any acts already done by them. But he did not think that it would be right to authorize him to act under this Bill in respect to past offences. Section III rendered a person who should, from and after the 24th March, intimidate any other person with the intention of inducing any other person to break his contract "liable to a sentence of imprisonment, with or without hard labor, for a period not exceeding six months, or to a fine not exceeding two hundred rupees, or to both, such fine being commutable, if not paid, to a further period of imprisonment not exceeding six months." So that, under this Section, a person might be imprisoned for six months for something which he had done last week, whereas he did not think that any man ought to be punished for an act done before the passing of that law. The law might indemnify Officers for any acts done by them before its passing under the authority of the Lieutenant-Governor. But he did not see why, if a person were to be brought up hereafter before a Magistrate for having committed an offence between the 24th and 31st March, he should be punished under the authority of an Act passed on the 31st March. He, therefore, thought that there was a great distinction between merely giving indemnity for past acts and making persons liable to be punished, for a past offence. It appeared to him that all cases of offences committed between the 24th and 31st March, which had not yet been decided but were still pending, should be dismissed.

The question being put for the omission of the figures "24th" the Council divided—

Ayes 5-	*Noes* 3.
Mr. Sconce.	Mr. Wilson.
Mr. Forbes.	Sir Bartle Frere.
Mr. Harington.	Sir James Outram.
Mr. LeGeyt.	
The Chairman.	

So the Chairman's Motion was carried.

The question being proposed for the substitution of the figures "31st" for those just omitted—

Sir BARTLE FRERE said, he would propose to omit from this Clause all the words as to date, and introduce a Section prescribing the time from which the Act should have effect. This would meet the object which the Honorable and learned Chairman had in view of avoiding even the appearance of *ex post facto* legislation. He entirely agreed with what fell from the Right Honorable Gentleman, that the alteration proposed would not satisfactorily effect the object contemplated by him, and he (Sir Bartle Frere) thought that the amendment now proposed by himself would completely meet the objection of the Honorable and learned Chairman.

Mr. WILSON said, he apprehended that no further notice of publication was necessary than had already been given to the Bill. He believed the Bill appeared in all the newspapers on Monday last; and the Honorable Member for Bengal had stated that the Executive Government had already adopted measures for its proclamation among the ryots and others in the several Districts; so that it might be presumed that it was by this time generally made known that the operation of the Bill was to have commenced on the 24th March. To show that legislation of this kind was not unusual, he would mention an analogous case which took place in England in 1848. The House of Commons met on a Saturday to pass the *Habeas Corpus* Act for Ireland. There was no time for obtaining the Royal assent, and the Bill was despatched to Ireland that very night. The *Habeas Corpus* was suspended on the following day. An objection was raised as to the legality of that measure, on the ground that the Bill did not receive the assent of the Crown until afterwards. But that objection was over-ruled. He only mentioned this case to show what serious results were likely to arise from such technical objections being taken, if, after agreeing to the second reading of the Bill, and allowing a week to pass, we should now alter the date from which it should take effect. As, however, the Council had decided against his view of the case, he would say nothing more on the matter. He would only remark that he did not think any possible advantage would be derived from the motion of the Honorable and learned Chairman, as he conceived that it might give rise to legal quibbles.

Mr. SCONCE said, that there was a long established usage, that no law took effect in the Mofussil except from the date of the receipt and promulgation of the *Calcutta Gazette* containing it in each District.

The CHAIRMAN'S Motion was then put and carried.

Mr. WILSON'S Motion for the substitution of "*such* agreement" for "*his* agreement" was carried.

Mr. WILSON'S Motion for the omission of the words "and for the cultivation of which a cash balance was made" being proposed—

Mr. SCONCE said, no member of this Council was more desirous than himself to assent to any proposition by which the object of the Right Honorable Member's amendment could be thoroughly attained, but he had a strong opinion as to the inexpediency of making the enforcement of the Act depend partly upon cash payment and partly on account of an old debt taken from the cultivator. He conceived that the Council would err exceedingly if they thought that the object of the present movement among the ryots was to put money into their pockets. We might be sure that they, the ryots, had higher and ulterior motives. They manifestly showed that the cultivation of indigo was irksome to them. He therefore thought that the Council should consider these circumstances before they came to legislate

in the matter, lest their legislation should prove to be of an *ex parte* character, which he was sure it was the wish of the Council to avoid as far as possible. We should retain what was the main principle of the Bill, namely to compel ryots to fulfil their engagements with the planters in cases in which cash had been advanced, thus looking upon the cash payment as an essential condition in the case. Throughout the past week the Lieutenant-Governor had been instructing the Magistrates to carry out the Act, and they had treated it as law on the assurance given by the second reading. Whatever assurances had been made by the Magistrates to the ryots, had become in a measure a pledge. The law of last Saturday had been sent into the Mofussil, and many ryots, he believed, had thus been encouraged to adhere to their engagements. One important ground of that Bill was the payment of cash. If the Council were now to do more than that, if they introduced also balances of account standing in the name of the ryot at the close of last season, they would very materially vary the principle of the Bill. But he would also ask the Council to remember the ground upon which the interference of the Legislature had been on this occasion invoked. It was said that large sums, many lakhs, had been paid by the planters to ryots by way of advances, and we were told that these payments were put in jeopardy by the refusal of the ryots to fulfil their contracts. But he (Mr. Sconce) conceived that a manifest distinction was observable between a cash payment and the nominal advance supposed to be covered by an old debt. In no proper sense could the neglect to cultivate indigo, when the advance consisted of a balance due by the ryot for last year's cultivation, be called a mis-appropriation of the nominal advance; without cash, there could be no mis-appropriation. In enforcing the contract you must look to the consideration. Money was a good consideration. But when you came to a debt, what was it? What did it mean? It meant that, during the operations of last season, the crops had failed, and that the whole year was lost to the ryot. For the year, his land was lost to him, as was the labor which he had devoted to the cultivation of it. By the year's operation he was left in debt, and it was that debt which it was proposed to accept as a consideration for the new contract. On that ground he (Mr. Sconce) thought that it would be injurious to the ryot and unjustifiable in principle that the full provisions of this Bill should be had recourse to for the enforcement of an outstanding debt. He would remind Honorable Members that, though disturbances were reported to have taken place in only one or two Districts, the terms of the law were general, and would apply to Dacca and Mymensing as well as to Nuddea. For these reasons he was averse to adopt the amendment of the Right Honorable Gentleman.

MR. HARINGTON said, at the time the Bill was introduced by the Honorable Member for Bengal, it appeared to him very doubtful whether, looking to existing enactments, there was any real necessity for this Bill, and whether, if any fresh legislation was called for, it should not take some other form. The consideration which he had since given to the subject had failed to remove his doubts, and what had fallen that day from Honorable Members who had spoken in the debate, he must confess, had rather tended to strengthen them. The existing enactments to which he referred were Regulation VI. 1823 and Act X. of 1836. The present Bill did not differ very materially from the provisions of those two enactments further than that, while by them the enforcement of the law was left to the Civil Courts, it was proposed to devolve on the Magistrate the duty of putting in execution the provisions of the present Bill. It was quite possible that the Magistrate was a more formidable person in the eyes of the native community than the Judge, and that the Magistrate's Court, or, as it was called, the Fouzdaree Court had greater terrors for the masses than the Civil

Court, and it might be well to transfer to the Magistrates the jurisdiction now exercised by the Civil Courts under the enactments to which he was referring. He doubted whether more than this was necessary, or whether the present Bill would prove really as beneficial to the planters as the existing Regulations, or afford them speedier or better means of obtaining effectual redress. Section II. Regulation VI. 1823 provided:—

"If any person shall have given advances to a ryot, or other cultivator of the soil, under a written engagement, stipulating for the cultivation of indigo plant on a portion of land of certain defined limits, and for the delivery of the produce to himself, or at a specified factory or place, such person shall be considered to have a lien or interest in the indigo plant produced on such land, and shall be entitled to avail himself of the process hereinafter provided for the protection of his interest, and for the due execution of the conditions of the contract."

Then came a Section, which provided:—

"If any person who may have made advances on conditions of the nature above described, shall have just reason to believe that an individual under engagement with him is evading, or is about to evade, the execution of his contract, by making away with and disposing of the produce otherwise than as stipulated, or that he has engaged secretly or openly to supply the same to another, it shall be competent to such person to present a petition of complaint to the Zillah or City Judge within whose local jurisdiction the land stipulated to be cultivated with the indigo plant may be situated, filing with the same the original deed of engagement by which the produce may be assigned, and engaged to be delivered to himself or at his factory, and certifying in his petition that such deed was voluntarily and *bonâ fide* executed by the individual complained against."

Rules of procedure followed, which were of the simplest and most summary character.

Now, supposing an indigo planter to have conformed to the conditions of the Sections which he had read, that was to say, to have taken a written engagement mentioning not only the quantity of land which the ryot was to cultivate, but also its limits, so that no dispute could arise as to the particular land contracted for, he (Mr. Harington) did not see what more summary law the planter required or could desire. He believed, however, it was not usual to take written engagements. The agreements were generally verbal, and in the absence of any specification of the nature contemplated by the law, constant disputes had arisen which had resulted in the present state of things. That was the fault not of the law but of those for whose benefit and protection the law was intended. The word used in Regulation VI. of 1823 was "advances", by which he (Mr. Harington) understood cash advances on account of the current season's cultivation. The Honorable Member for Bengal, in introducing the present Bill, had led them to understand that it was intended to apply only to cases in which such advances had been made, but he (Mr. Harington) feared that the effect of omitting the words mentioned in the motion of the Right Honorable Gentleman opposite (Mr. Wilson), taken with another motion which the Honorable and learned Vice-President led them to expect on Saturday last he intended to make, would be greatly to alter the character of the Bill in this respect, and he should therefore vote against the amendment.

SIR BARTLE FRERE said, he would premise by observing that there was not a Member of that Council who would not sooner cut off one of his hands than have anything to do with one-sided legislation. The object of this Bill was, they all knew, as much for the protection of the interests of the ryot as of the planter. Honorable Members would recollect the state of things last week. It was true that we were not now on the eve of a serious disturbance, but he must say that a man had a greater power of looking into futurity than he (Sir Bartle Frere) confessed he had, to say that the Bill was not as much needed now as it was last week. Vast interests had been imperilled, and perhaps were so still. The Honorable Member for Bengal had drawn a distinction between cash advances and balances of old accounts. So far as his (Sir Bartle Frere's)

experience went, he had found it to be a very difficult matter in examining Native accounts to say what was a cash advance and what not. It was often impossible to say what amount of cash was advanced to a debtor. The transactions were often so complicated that they would set at fault the most acute accountant. According to the view of the Honorable Member, no discretion whatever was to be left to the Magistrates, whereas he (Sir Bartle Frere) thought that the Magistrates might safely be trusted with such a power without fear of any injustice being done. If they were to wait till they had settled a Bill which should be liable to no abuse, he (Sir Bartle Frere) feared they must give up the Bill altogether. He gave full weight to the argument of the Honorable Member for the North-Western Provinces that there were legislative enactments in the Statute Book very similar to the provisions of the present Bill. That was precisely what he (Sir Bartle Frere) had stated last Saturday, namely, that we required no new principle of law but new machinery. In ordinary cases you might very properly leave persons to the remedy provided by the Civil Courts.

MR. WILSON said, he did not wish to trouble the Council with any further observations in the matter. He only desired to say that the Honorable Member for Bengal and the Honorable Member for the North-Western Provinces had entirely misapprehended the object of his amendment. His object merely was to remove a doubt, and not to alter a principle of the Bill.

MR. SCONCE said, he desired to make one or two observations in reference to what had just fallen from the Right Honorable Gentleman. He would assure him that he did not labor under any misapprehension as to the object of his (the Right Honorable Gentleman's) amendment. He (Mr. Sconce) spoke of the small change proposed to be introduced, by importing into the contract a new element, that is, to include old balances. Let us look at the matter in another sense. Suppose a Ryot contracted to cultivate 20 beegahs, for which, as was ordinarily the case, he required an advance of 2 rupees a beegah, or 40 rupees for the whole. Instead of receiving an advance in cash of 40 rupees, 35 rupees was presumed to be the balance of an old debt, and the remaining 5 rupees only was what he received in cash. With a view to the adjustment of accounts, he could conceive a fraction of the whole estimated advance, say a sixth, or an eighth, to consist of an old claim. But if the terms of the law remained general, as would be the effect of the Right Honorable Gentleman's amendment, any old claim, whatever might be its amount, might be brought in. His (Mr. Sconce's) ground of objection therefore was to the general terms of the Law as the amendment of the Right Honorable Gentleman would leave it, but certainly he was under no misapprehension as to the terms in which he had drawn the Section of the Bill now referred to.

THE CHAIRMAN said when the Honorable Member for Bengal introduced this Bill last week, he (the Chairman) understood him to say that the Lieutenant-Governor sympathised with the planters, and desired to give them a more summary redress than they now possessed. Now, what was the nature of the case? An indigo planter entered into a contract with a ryot to cultivate a certain number of beegahs. So much was allowed for each bundle of indigo brought into the factory. Last year, probably, being a bad season, the ground cultivated did not yield a sufficient number of bundles of indigo to cover the advances, and the ryot was unable to repay the amount of the advance made to him by the planter. Now, suppose the case put by the Honorable Member, that an advance of 40 rupees consisted of 5 rupees in cash and 35 rupees the amount of an old arrear. There was no doubt that the advance was made by the planter on a former occasion. The ryot wanted an advance to enable him to carry on this year's cultivation, and came to the planter for a cash advance. The planter tells him—"Here is an advance of 5 rupees

for you. This, with the 35 rupees you owe me, will make up 40 rupees." Both these amounts together formed the consideration for the present contract, and for the 40 Rupees the ryot bound himself to cultivate a certain number of beegahs. Now, if the actual cash advance only was to be considered, how could the Magistrate say to what portion of the land which the ryot had agreed to cultivate the 5 rupees, and to what portion the 35 rupees belonged? It would be impossible for the Magistrate to decide such cases at all, and then the Bill, as it stood, would prove useless. If, as a free agent and without any force or fraud, the ryot had entered into a contract to cultivate a certain number of beegahs and to sell the produce to the planter at so much a bundle, he ought to perform his contract. The rights of the parties were fixed by an agreement relating to the present season. He (the Chairman) saw no difference in principle between a contract on a total cash advance and a contract on an advance partly of cash and partly of an old arrear.

MR. HARINGTON explained, in reference to what had fallen from the Honorable Member of Council on his left (Sir Bartle Frere), that he had never intended that, in cases of the nature of those with which they were now dealing, the planter should be referred to a regular suit for redress. The procedure laid down in existing enactments was as summary as that contained in the Bill before the Council; and, while he fully admitted that the planter was entitled to every proper support which this Council could give him, he (Mr. Harington) must repeat that he much doubted whether the planter would really gain anything by the passing of the proposed Bill.

After some further discussion, Mr. Wilson's amendment was put and carried.

THE CHAIRMAN moved the insertion of the words "or otherwise to fulfil his engagement" in lieu of the words just omitted.

The Motion was carried, and the Section as amended was then passed.

Section II provided as follows :—

"On hearing the answer of the person complained of, and on taking such evidence as both parties may adduce, if the complaint be established to the satisfaction of the Magistrate, the Magistrate shall assess a certain sum as damages, not exceeding five times the said advance made, and five times the value of any seed that may have been furnished to him for such cultivation, to be paid by the defendant; and failing the immediate payment of the damages assessed, may order the defendant to be imprisoned in the civil jail for a term not exceeding three months; and may, on the motion of the complainant, furthermore proceed to levy the damages assessed from the property of the defendant, in the mode provided for enforcing decrees of Court under Act VIII of 1859. Provided that, if the amount of the said damages is paid or levied within the aforesaid term of three months, the defendant shall be released from jail on that amount being paid or levied."

MR. WILSON moved the omission of the words "not exceeding five times the said advance made, and five times the value of any seed that may have been furnished to him for such cultivation, to be paid by the defendant," and the substitution of the words "sustained by reason of the breach of the contract." He said, his object in moving this amendment was not to increase the stringency of the law in any degree, but he was afraid that the words which he proposed should be struck out would give rise to doubts, and might lead to the supposition that it was intended that the full amount of the penalty specified in the Section should be awarded in every case, whereas what was really intended was to leave a large discretion to the Magistrate.

THE CHAIRMAN concurred in the proposed amendment.

MR. HARINGTON objected to the alteration proposed in this Section. He observed that the effect of the alteration would be to involve the Magistrate in a protracted and intricate enquiry as to the amount of damages actually sustained by the planter, by reason of the failure of the ryot to fulfil his contract, and to leave him to award any amount of damages he might think proper. Now, as the Bill allowed no appeal from the order of the Magistrate, he (Mr. Harington)

thought that this would be giving too large a power to the Magistrate, and he should therefore oppose the amendment. With reference to what had fallen from the Right Honorable Gentleman opposite, he would only observe that all Criminal Regulations fixed a maximum of punishment, but no Magistrate ever supposed that that maximum was to be awarded in every case; he knew that the intention of the law was to place a limit on his powers within which he might pass such sentence as he deemed adequate to the offence.

The question being put, the Council divided—

Ayes 7.	*Noes* 1.
Mr. Sconce.	Mr. Harington.
Mr. Forbes.	
Mr. LeGeyt.	
Mr. Wilson.	
Sir Bartle Frere.	
Sir James Outram.	
The Chairman.	

So the Motion was carried.

THE CHAIRMAN moved the insertion of the following words after the above :—

"If it shall appear to the Magistrate that the person who has agreed to cultivate the indigo plant is still able to perform his contract, the Magistrate shall order him specifically to perform the same, and shall also, in such case, award a certain sum to be paid as damages as an alternative."

Agreed to.

THE CHAIRMAN then moved the insertion of the following words after the above :—

"In cases in which the land to be cultivated with indigo plant is defined by the agreement, the Magistrate may order the attachment as a security for the damages assessed, or to be assessed for the breach of the agreement of any other crop of the defaulter that may at any time, during the present season, be growing on such land."

Agreed to.

MR. HARINGTON suggested the necessity of inserting words so as to remove all doubts as to who was to pay diet money for the ryots during the term of their imprisonment, namely, whether the Planters or the Government.

THE CHAIRMAN said, that he did not think the insertion of the words necessary. If the Act was silent on the subject, it would be understood that the Government would bear the expense. If prisoners were in jail, they must be fed.

MR. WILSON concurred in opinion with the Honorable and learned Chairman, and said that, because the imprisonment was to take place in the Civil jail, it was not to be supposed that the imprisonment was of the same nature as that of a man put into jail at the suit of another. The reason why the defendant was to be imprisoned in the Civil jail was to show that, notwithstanding the imprisonment was the act of the Magistrate, the offence for which the defendant was imprisoned was not of an ordinary criminal nature.

MR. HARINGTON expressed himself as quite satisfied. His only object in mentioning the subject was to prevent doubts from arising hereafter as to the payment of the diet money for persons ordered to be confined under the Act. The publication of this report would show what was the intention of the Council on the point.

THE CHAIRMAN moved the omission of the words "and failing the immediate payment of the damages assessed," and the substitution of the words "if after an order of specific performance of an agreement, the defendant failed to perform the agreement, or to pay the amount of damages ordered to be paid as an alternative, or if after an order for payment of damages the same be not immediately paid, the Magistrate"

The Motion was carried, and the Section as amended passed.

THE CHAIRMAN moved the insertion of the following new Section after Section II :—

"In case it shall appear to the satisfaction of the Magistrate that the agreement has been obtained by means of fraud, force, or unlawful intimidation, the complaint shall be dismissed."

Agreed to.

Mr. SCONCE then moved the insertion of the following new Section after the above:—

"If any complaint preferred under this Act be dismissed for want of proof or appearance of the complainant, or for any other cause, the Magistrate may order the complainant to pay such amount for costs and compensation as he may think reasonable. In default of payment of any such amount, the same may be levied by distress and sale of the property of the person ordered to pay the same."

Agreed to.

Section III provided as follows:—

"If any person, from and after the 24th day of March 1860 shall, by violence, threats, or otherwise, intimidate, or attempt to intimidate any other person who shall have entered into any such agreement as aforesaid, with the intention of inducing such person to break the conditions thereof; or if any person from and after the date aforesaid, shall conspire with any other person or persons for the purpose of causing the breach of any such contract or contracts as aforesaid, he shall, on conviction before a Magistrate, be liable to a sentence of imprisonment, with or without labor, for a period not exceeding six months, or to a fine not exceeding two hundred Rupees, or to both, such fine being commutable, if not paid, to a further period of imprisonment not exceeding six months."

The CHAIRMAN moved the omission of the figures "24th" and the substitution of the figures "31st."

Agreed to.

Mr. SCONCE moved the omission of the words "or if any person, from and after the date aforesaid, shall conspire with any other person or persons for the purpose of causing the breach of any such contract or contracts as aforesaid." He thought that the Clause should be confined to cases of intimidation, and should not embrace the communications that one ryot would hold with another relative to his land. One might say—"well I shan't sow," and the other reply—"nor will I:" and upon such words an eavesdropper might charge a conspiracy.

The CHAIRMAN said, he had much pleasure in supporting the amendment of the Honorable Member for Bengal. If the Honorable Member had not moved it, he (the Chairman) should have done so. It appeared to him to be a most dangerous thing to punish a man for conspiring to do an act which might not after all be done. He quite agreed with the Honorable Member as to the expediency of confining the Clause to overt acts.

The Motion was then carried and the Section passed.

Section IV provided as follows:—

"If any person shall maliciously destroy or damage, or if any person shall maliciously command, compel, or persuade, or shall with others maliciously conspire to command, compel, or persuade any other person to destroy or damage any growing crop of indigo, he shall, on conviction before a Magistrate, be liable to be sentenced to imprisonment, with or without labor, for a period not exceeding six months, or to a fine not exceeding two hundred Rupees, or to both, such fine being commutable, if not paid, to a further period of imprisonment not exceeding six months."

The CHAIRMAN said, he had a similar amendment to propose in this Section. He would move the omission of the words "or shall, with others, maliciously conspire to command, compel, or persuade."

Sir BARTLE FRERE said, there was a difference between this and the preceding Section. He thought that the word "maliciously" used in this Section would make the provision safe enough.

The CHAIRMAN said he did not think it right to punish men for an agreement or combination to commit an offence where no act was done in pursuance of it, and which might never be committed.

The Motion was carried and the Section as amended then passed.

Section V provided as follows:—

"No appeal shall lie from the decision of a Magistrate under this Act."

Mr. FORBES moved the addition of the words "when the damages assessed shall be under one hundred Rupees." He said that, as the Bill was originally introduced, there might have been no objection to not allowing any appeal from the decision of a Magistrate, but now that a Magistrate would have unlimited discretion, the question of appeals assumed quite a different aspect. He would therefore propose the addition of the above words.

MR. SCONCE said, he thought there should be an appeal from the order of a Magistrate under Sections III and IV.

SIR BARTLE FRERE said, if you give one appeal or even part of an appeal, you take away the whole benefit of the Act. Every one of those districts was within easy reach of the Lieutenant-Governor, who not only would have the power, but would, he (Sir Bartle Frere) was pretty sure, have considerable pleasure in reviewing the proceedings of the Magistrates in any case of proved injustice or harshness.

MR. SCONCE said, he very much doubted whether his Honor would undertake such a task. As an instance, he would mention that not long ago he read some official correspondence in the newspapers, in which he (Mr. Sconce) believed the Lieutenant-Governor distinctly threw off the duty of reviewing the proceedings of Judicial Officers in Non-Regulation Provinces. He (Mr. Sconce) would move, by way of amendment on the Motion of the Honorable Member for Madras, the omission altogether of Section V, and the substitution for it of the following :—

"An appeal may be preferred to the Sessions Judge from any order made by the Magistrate under Sections III and IV of this Act, in cases in which a sentence exceeding two months may be awarded."

MR. WILSON said that, since his arrival in the country, if he understood any thing to have been more the subject of complaint than another, it was the universal practice of appeals from one Court to another; and if he had heard that any measure of this Council had given more satisfaction to the public than another, it was the Act passed last year, by which this practice of appeals in Civil cases had been, if not entirely abolished, considerably abridged. The measure now before the Council was a summary one, and he deprecated strongly the adoption of any amendment having for its object to allow an appeal from any decision of a Magistrate under the proposed Act.

MR. FORBES' Motion and MR. SCONCE's amendment were then severally put and negatived, and the Section was passed as it stood.

Section VI (which provided by whom the power of a Magistrate under the Act might be exercised) was passed as it stood.

THE CHAIRMAN moved the introduction of the following new Section after Section VI :—

"A decision of a Magistrate shall be a bar to any further proceeding for the same breach of agreement. No decision under this Act shall have any force or effect in regard to anything not to be performed during the current season."

Agreed to.

Section VII provided as follows :—

"This Act shall have effect from and after the 24th day of March 1860, within the territories subject to the Lieutenant-Governor of Bengal. And no complaint or prosecution shall be entertained under this Act, unless preferred within six months from the date aforesaid."

THE CHAIRMAN moved the substitution of the figures "31st" for the figures "24th."

Agreed to.

THE CHAIRMAN also moved the substitution of the words "and shall not extend beyond" for the word "within" before the words "the Territories subject to the Lieutenant-Governor of Bengal."

The Motion was carried, and the Section as amended then passed.

After much discussion, Sir Barnes Peacock moved the introduction of the following Section :—

"All orders made or acts done before the 4th day of April 1860, which would have been lawful if the Bill to enforce the fulfilment of indigo contracts, as read a second time on the 24th day of March 1860, had then become law, are hereby declared to be valid. And all Magistrates and other Public Officers are hereby indemnified for any acts done before the said 4th day of April 1860, which would have been justifiable under the said Bill if the same had become law on the said 24th day of March 1860."

Agreed to.

THE CHAIRMAN then went back to Sections I, III, and VII, and moved as to each the substitution

of the words "4th day of April" for the words "31st day of March."

The Motions were severally carried, and the Sections, as further amended, then passed.

SIR JAMES OUTRAM then moved the introduction of the following Sections:—

"The Lieutenant-Governor of Bengal shall, as soon as conveniently may be, issue a Commission to such persons as the said Lieutenant-Governor shall think fit, for the purpose of enquiring into and reporting on the system and practice of indigo planting in Bengal, and the relations between the Indigo Planter, and the ryots and holders of land in Bengal aforesaid. The said Commissioners shall fully enquire into the matters aforesaid, and shall, as soon as they conveniently can, report to the Lieutenant-Governor the result of their enquiries, and shall in their report or reports suggest such alterations, if any, as may, in their opinion, be beneficially made in the law relating to the system and practice, and the relations aforesaid.

"In case of the death or resignation of any of the said Commissioners, or of any of them becoming unable or refusing to act, it shall be lawful for the other Commissioners or Commissioner to act alone, and all the powers by this Act given to Commissioners shall and may be exercised by the continuing Commissioners or Commissioner alone, but only until such vacancy can be filled up. It shall be lawful for the said Lieutenant-Governor, from time to time, and he shall, as soon as conveniently may be, without issuing a new Commission, appoint some other person or persons to act as a Commissioner or Commissioners jointly with the continuing Commissioners or Commissioner, and in such case all the powers conferred by this Act shall and may be exercised by the said newly appointed Commissioner or Comissioners jointly with the continuing Commissioner or Commissioners.

"It shall be lawful for the Commissioners aforesaid, by a summons under the hand of any one of them, to require the attendance before them, at a time and place to be mentioned in such summons, of any person or persons whomsoever, residing or being within the Lieutenant-Governorship of Bengal, whose evidence shall, in the judgment of the Commissioners aforesaid, be material to any of the matters of the enquiry aforesaid, and to require the person or persons so summoned to bring and produce before them all such books, papers, deeds, and writings as to them, the said Commissioners, shall appear necessary for arriving at the truth of the matters directed to be enquired into by the said Commissioners, all which persons shall accordingly attend before the said Commissioners, and shall produce such books, papers, deeds, and writings as shall be required of them, and shall be in their custody and control, or in the custody and control of any one of them, according to the tenor of the summons. Provided always that no person shall be compelled to attend before the said Commissioners, or to give his evidence at a greater distance than fifty miles from the place where such person shall be residing.

"It shall be lawful for the Commissioners aforesaid, or one of them, to administer an oath, or in the case of persons allowed by law, to make affirmation instead of taking an oath, an affirmation in such form as to them, the said Commissioners, shall seem fit, to all persons who shall be examined before them, touching the matters to be enquired into by them as aforesaid. Provided that nothing herein contained shall render it necessary for the said Commissioners to take evidence upon oath or affirmation, unless they shall think fit or expedient so to do.

"If any person, upon whom any such summons shall be served, by the delivery thereof to him, or by the leaving thereof at his usual place of abode, being a person living within fifty miles of the place at which he shall be required to attend, without reasonable cause (to be allowed by the Commissioners aforesaid,) fail to appear before them at the time and place mentioned in the summons, or shall refuse to be sworn or to make affirmation (as the case may be), or shall not make answer to such questions as shall be put to him touching the matters directed, or which may hereafter be directed, to be enquired into by the Commissioners aforesaid, or shall refuse or fail, without reasonable cause, (to be allowed by the Commissioners aforesaid,) to produce and show to the said Commissioners any such paper, book, deed, or writing being in his possession or under his control, as to the Commissioners aforesaid shall appear necessary for arriving at the truth of the matters to be enquired into by them, the Commissioners aforesaid shall have the same powers in all respects, touching any such persons so failing to appear or refusing to be sworn, or to make affirmation, or not answering such questions as shall be put to him, or refusing to produce and show any such book, paper, deed, or writing as aforesaid, as the principal Court of original Civil jurisdiction, within the limits of which the said person shall be residing, may by law exercise against any person for making default of appearance, or for refusing to be sworn, or to give evidence on any issue joined in any action depending in such Court."

With regard to the second of the above Sections, after some conversation on the suggestion of the British Indian Association that the Commissioners should not be at liberty to hold their proceedings, unless at least three of their body be present at their sittings—

MR. WILSON said, he believed that the provision objected to by the

British Indian Association was taken from the English Act relating to the appointment of Commissions of Enquiry. The object of the Clause was to provide for the interregnum between the death or resignation of one Commissioner, and the appointment of a successor.

The Sections were then severally passed.

THE CHAIRMAN moved the introduction of the following Section:—

"Whenever a summons is issued for the attendance of a witness under this Act, the Commissioners may, if they think fit, order such witness to receive from the Collector such travelling and other expenses as he would have been entitled to receive, had he been summoned to appear and give evidence in the principal Court of original Civil jurisdiction in the District."

Agreed to.

SIR JAMES OUTRAM moved the addition of the following Section:—

"Every person who, upon examination upon oath or affirmation before the Commissioners aforesaid, shall wilfully give false evidence, shall be liable to the punishment of perjury."

Agreed to.

The Preamble recited as follows:—

"Whereas it is expedient, pending a Commission of Enquiry into the practice of indigo planting in Bengal, which the Executive Government purposes to appoint after the close of the present season of cultivation, to make temporary provision for enforcing, by summary process, the execution of agreements entered into for the cultivation of indigo plant; and better to provide for the punishment of certain unlawful acts connected with such cultivation. It is enacted as follows:—"

SIR JAMES OUTRAM moved the substitution of the words "to issue" for the word "pending" in the beginning of the Preamble.

Agreed to.

SIR JAMES OUTRAM then moved the omission of the words "which the Executive Government purposes to appoint after the close of the present season of cultivation," and the substitution of the words "and the relations between the Indigo Planters, and the ryots and holders of land in Bengal and"

The Motion was carried, and the Preamble as amended then passed.

The title was passed with the addition of the words "and to provide for the appointment of a Commission of Enquiry."

The Council having resumed its sitting, the Bill was reported with amendments.

MR. SCONCE then moved that it be read a third time and passed.

The Motion was carried and the Bill read a third time.

THE VICE-PRESIDENT moved that the Bill as read a third time, and the Bill as read a second time, be published in the *Calcutta Gazette*.

Agreed to.

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill, as read a third time, to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

EMIGRATION TO ST. VINCENT.

THE VICE-PRESIDENT moved that the Council resolve itself into a Committee on the Bill "relating to the Emigration of Native Laborers to the British Colony of St. Vincent."

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

ZILLAH COURT OF FURRUCKABAD.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to repeal certain Laws relating to the Jurisdiction of the Zillah Court of Furruckabad."

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

KING OF OUDE.

MR. HARINGTON moved that the Council resolve itself into a

Committee on the Bill, "to provide for the execution of processes within the precincts of the residence of His Majesty the King of Oude."

Agreed to.

Section I provided as follows:—

"When any process, issued by any Civil Court, Collector, or other Revenue Officer in Her Majesty's East Indian Territories, is required to be served or executed within the precincts of the premises occupied by the King of Oude, such process shall be transmitted to the Officer appointed to be Agent with His Majesty on the part of the British Government, and such Officer shall cause such process to be served or executed, according to the exigency thereof, and shall return the same, with a certificate of what shall have been done thereon.

SIR CHARLES JACKSON referred to the words "*precincts* of the premises" as being too vague and indefinite. Was it not quite enough to exempt the houses in which the King and his Begums lived? If any person were to visit Sir Lawrence Peel's late residence at Garden Reach, he would see that a new town had grown up around the house; and he (Sir Charles Jackson) feared that, if this Act passed, it would be an Alsatia. If the Council were to make a whole town privileged, as in fact the Bill proposed to do, was there no danger of its being converted into a refuge for criminals, or a receptacle for stolen property?

MR. HARINGTON said, the Honorable and learned Judge appeared to have overlooked the last Section of the Bill, which was as follows:—

"It shall be lawful for the Governor-General in Council to define, for the purposes of this Act, by notification in the Calcutta *Gazette*, the limits of the precincts of the premises occupied by the King of Oude, and from time to time in like manner to alter such limits."

There was no reason to suppose that the Governor-General in Council would carry the operation of the Bill beyond what was necessary in reference to the object contemplated in its introduction. As noticed by him on former occasions, the Bill proposed no exemption from either Civil or Criminal processes, but merely provided a mode for the execution of those processes, leaving it discretionary with the Magistrate, as regards Criminal processes, to adopt that mode or not as he might think proper.

THE CHAIRMAN said, he did not clearly understand whether this Bill was for the benefit of the King of Oude, or for the benefit of the public. If for the benefit of the public, then the word "may" should be substituted for the word "shall."

MR. HARINGTON said, the Bill was certainly intended for the benefit of the King of Oude; but though primarily intended for His Majesty's convenience, it was fully expected that the public would also benefit by its provisions, and that processes which it would be useless to attempt to serve without the assistance of the Agent with the King and of some of His Majesty's Officers, would, through their instrumentality, be served without difficulty. He had lately had an opportunity of speaking on the subject with the Governor-General's Agent at Moorshedabad, where similar provisions had been introduced by legislative enactment in respect to the Nawab Nazim of Bengal, or rather the precincts of his Palace, and he was assured by that Officer that, so far from any inconvenience resulting, the very contrary had been the case, and that while it rarely, if ever, happened that a process sent to him for execution was not served, if the officers of the various Courts were left to their own resources, their return would very frequently be *non est inventus*. He (Mr. Harington) could easily believe this from his own experience at Banda. The Nawab of Banda formerly enjoyed similar privileges to those proposed to be given in the present instance, and he (Mr. Harington) never experienced any difficulty in getting the processes of his Court served within the premises occupied by the Nawab of Banda and his followers. All that he did was to entrust the process to an Officer of the Nawab appointed for the purpose, and the result was that it was immediately served. The same, he had no doubt, would happen in the case of the King of Oude and his followers under the

operation of the present Bill, should it pass into law. The residents of Garden Reach, who had petitioned against the Bill, objected that the legislation in the case of the Nawab Nazim of Bengal was of very old date, and they argued that a different principle should govern modern legislation; but they appeared to have overlooked the fact that the original laws relating to the Nawab Nazim of Bengal had been repealed, and that a new Act, containing similar provisions to those of the Bill now before the Council, was passed so recently as the year 1854, when the whole subject was fully considered. In framing the present Bill, he had closely followed the wording of the corresponding enactment for Moorshedabad, and he must repeat his conviction that the effect of the measure would be materially to facilitate the execution of legal processes within the precincts of the premises occupied by the King of Oude, and by consequence to promote the cause of justice.

MR. WILSON said, the object of the Bill, no doubt, was a very good and proper one. As he understood it, the exception which was intended to be given was personal; but some little care in the wording of the Bill might be needful to prevent the exemption from being construed into a local one. There was, as Honorable Members were aware, a spot in Edinburgh, known as "the precincts of Holyrood," where the exemption was local and not personal, and no end of rogues and violators of law had made Holyrood their place of escape. It was necessary to define clearly that no local exemption was intended, or we might have at Garden Reach a rendezvous for fugitive offenders of all sorts.

After some further discussion, Mr. Wilson moved the omission of the words "the precincts of."

The Motion was carried, and the Section as amended then passed.

Section II was passed after a similar amendment.

Section III was passed as it stood.

Section IV and the Preamble and Title were passed after corresponding amendments to the above; and the Council having resumed its sitting, the Bill was reported with amendments.

TOLLS (CIRCULAR AND EASTERN CANALS).

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on Boats, Rafts, and Floats passing through the Circular and Eastern Canals)."

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

CONSERVANCY (PRESIDENCY TOWNS AND STRAITS SETTLEMENTS).

THE VICE-PRESIDENT moved that the Council resolve itself into a Committee on the Bill "to amend Act XIV of 1856."

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

BILLS OF EXCHANGE, &c.

SIR CHARLES JACKSON moved for the discharge of the Select Committee on the Bill "to facilitate the remedies on Bills of Exchange, Hoondies, and Promissory Notes, by the prevention of frivolous or fictitious defences to actions thereon in Her Majesty's Supreme Courts." He said that the subject of this Bill would form part of the new Code of Civil Procedure which was now in the course of preparation for the Supreme Courts.

Agreed to.

MARINE COMMITTEE.

THE VICE-PRESIDENT moved for the discharge of the Select Committee appointed to take into consideration the projects of Law connected with the Marine Department, and to prepare such Bill or Bills as might be necessary with reference thereto. He said that, since the Committee was

appointed, the Act for the Regulation of Ports and Port-dues had been brought in and passed. Subsequently the Acts relating to the levy of Port-dues, and the Act relating to Merchant Seamen, had been passed; and as there was nothing further to be done by the Committee, he begged to move for its discharge.

Agreed to.

ADMINISTRATION OF THE LAW (SUPREME COURTS).

THE VICE-PRESIDENT moved for the discharge of the Select Committee on the Bill "for the further improvement of the Law as administered in Her Majesty's Supreme Courts; for the transfer and abridgement of the Ecclesiastical jurisdiction thereof; and for giving additional powers in certain cases to Justices of the Peace, with regard to offences committed out of their jurisdiction." This was a Bill which was brought in by Sir Lawrence Peel, and he (the Chairman) was now the only Member of the Committee on that Bill. As he saw no necessity for proceeding with the Bill, he would move for the discharge of the Committee.

Agreed to.

TENASSERIM AND ARRACAN.

THE VICE-PRESIDENT moved for the discharge of the Select Committee on the Bill "to provide for the administration of Civil and Criminal Justice, and of Police, and for the collection of the Public Revenue in the Provinces of Tenasserim and Arracan." He said that this case stood over pending the settlement of the Codes of Civil and Criminal Procedure. There was in the Code of Civil Procedure passed last year a Clause authorizing the Executive Government to extend the Act to Non-Regulation Provinces, and, under the authority of that Clause, the Act, he believed, had been extended to the Tenasserim and Martaban Provinces. As the Code of Criminal Procedure, now before the Council, also contained a similar provision, he saw no necessity of proceeding further with this separate Bill.

Agreed to.

REGISTRATION OF DECREES.

THE VICE-PRESIDENT moved for the discharge of the Select Committee on the Bill "to provide for the Registration of Decrees of the Civil Courts, and to prevent alienations of property in fraud of creditors." He said, that the subject of this Bill ought to be taken into consideration in connection with the general Bill brought in by the Honorable Member for Madras "for the Registration of Assurances."

Agreed to.

PENAL RECOGNIZANCES.

THE VICE-PRESIDENT moved for the discharge of the Select Committee on the Bill "for the better prevention of offences against the public tranquillity, and to amend the law regarding the taking of bonds for keeping the peace." This was a Committee appointed by the late Member for Madras (Mr. Eliott). The matter had excited considerable discussion at the time, but all that was necessary to be done was provided for by the Code of Criminal Procedure.

Agreed to.

ATTACHMENT OF TENURES, &c.

THE VICE-PRESIDENT moved for the discharge of the Select Committee on the Bill "to facilitate the trial of rights to attach tenures and to eject occupiers of land in certain cases, and to prohibit the enforcement of such rights without the assistance of a Court of competent jurisdiction." He said, as the great object of this Bill had been provided for by the Act relating to the Limitation of Suits, there was no necessity for proceeding any further with it.

Agreed to.

EXECUTORS AND ADMINISTRATORS.

THE VICE-PRESIDENT moved for the discharge of the Select Committee on the Bill "to remove doubts

respecting the liability of real estate within the Settlement of Prince of Wales' Island, Singapore, and Malacca, to the payment of debts of deceased persons; and to enable Executors and Administrators to sell and dispose of the same." He said, this was a Bill which he brought in at the request of the late Chief Justice. It was introduced at the instance of one of the learned Recorders in the Straits. As he (Sir Barnes Peacock) did not see any necessity for proceeding further with it, he begged to move for the discharge of the Committee.

Agreed to.

WARRANTS OF ATTORNEY AND COGNOVITS.

SIR CHARLES JACKSON moved for the discharge of the Select Committee on the Bill "to provide for the due execution of warrants of Attorney to confess judgment and cognovits." He said that this also was a matter which would form part of the Civil Procedure about to be provided for the Supreme Courts, and it was not necessary to proceed with a separate Bill for this object.

Agreed to.

PUNISHMENT OF CHOWKEYDARS.

MR. HARINGTON moved for the discharge of the Select Committee on the Bill "for the punishment of Chowkeydars for neglect of duty." He said that there was before the Council another Bill on the same subject, into which the provisions of this Bill could be introduced, if necessary.

Agreed to.

IMPRESSMENT OF CARRIAGE AND SUPPLIES FOR TROOPS AND TRAVELLERS (BENGAL).

THE VICE-PRESIDENT moved that the Bill "to amend the law regarding the provision of Carriage and Supplies forTroops and Travellers, and to punish unlawful Impressment," be struck out of the list of Select Committees. This Bill had been brought in by the Lieutenant-Governor of Bengal. All the Members of the Committee upon that Bill had gone away without their places in the Committee having been supplied. The Bill might therefore be presumed to have died a natural death, and unless the Honorable Member for Bengal wished to proceed with it, might be struck out of the list.

MR. SCONCE said he had received no instructions concerning this Bill.

The Motion was subsequently put and agreed to.

The Council adjourned.

Saturday, April 7, 1860.

No Member of the Council was this day present.

Saturday, April 14, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. B. Harington, Esq.,
Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon. J. Wilson,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

INDIGO CONTRACTS.

THE VICE-PRESIDENT read the following Memorandum from the Secretary to Government in the Home Department, communicating a Message from the Governor-General:—

No. 207.

The Secretary to Government in the Home Department has the honor to communicate to the Legislative Council the following telegraphic message which he has received from the Secretary to Government with the Governor-General:—

MESSAGE.

Governor-General's Camp, dated 9th April.

The Governor-General has this day given his assent to the Indigo Contract Bill, sent with your letter of 2nd instant.

W. GREY,
Secy. to the Govt. of India.

Fort William, the 13th April 1860.

MOONSIFFS.

THE CLERK presented to the Council a Petition of the Sheristadar of the

Moonsiff's Court of Zoraworgunge, in Chittagong, forwarding the draft of a law for the more extensive employment of Moonsiffs empowered to try Civil, Criminal, and Revenue cases.

REGISTRATION OF ASSURANCES.

THE CLERK also presented a Petition from the same person, forwarding the draft of a law to enable Judicial Officers to carry on their business with the help of a single Amlah.

MR. FORBES moved that the above Petition be referred to the Select Committee on the Bill "to provide for the Registration of Assurances."

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement, suggesting amendments in Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca).

MR. FORBES moved that the communication be referred to the Select Committee on the Bill to amend the above Act.

Agreed to.

LEGISLATION FOR THE STRAITS SETTLEMENT.

THE CLERK also reported that he had received a communication from the Governor of the Straits Settlement, relative to doubts which had arisen with regard to the intention of certain Acts, owing to the misapplication of the terms "Settlement" and "Station," and the different expressions used in reference to Courts established by Royal Charter.

LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

SIR CHARLES JACKSON presented the Report of the Select Committee on the Bill "for the registration of Literary, Scientific, and Charitable Societies."

ABKAREE REVENUE (BENGAL).

MR. SCONCE presented the Report of the Select Committee on the Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal)."

CHITTAGONG DISTRICT.

MR. SCONCE also presented the Report of the Select Committee on the Bill "to remove certain tracts on the eastern border of the Chittagong District from the jurisdiction of the tribunals established under the general Regulations and Acts."

BOUNDARY MARKS (FORT ST. GEORGE).

MR. FORBES moved the first reading of a Bill "for the establishment and maintenance of boundary-marks, and for facilitating the settlement of boundary disputes in the Presidency of Fort St. George." He said, he had occasion to occupy but little of the time of the Council in introducing the Bill, of the first reading of which he had given notice for that day. Some Members of this Council would remember that, in 1855, Mr. Eliott introduced a Bill for the establishment and maintenance of boundary marks in the Presidency of Fort St. George, and this Bill was passed as Act XX of that year. At the time that it was passed, the general survey now in progress had not been commenced; and although the Act provided sufficiently for the state of things then existing, it had been found unsuited to the altered state of affairs which existed, now that the whole Presidency was to undergo a survey, and all the land was to be re-assessed.

There were three things to be done. The survey was to be a field survey, and to enable the Surveyor to survey the fields, their boundaries must be marked, in order that villages might be separately marked in the map; their boundaries also must be demarcated; and then at the classification

and assessment of the lands, the presence of the land-owner was necessary.

Now the present law provided for the presence of the land-owner only when boundary marks to his land were to be placed, and afforded no means of securing his presence when his lands were measured, classified, and assessed. It also enacted that ten days' notice should be given of any requirement for the erection of boundaries, and that caused very great and very needless delay. The survey and re-assessment of the Presidency were estimated to cost between seventy and eighty lakhs of Rupees, and it was obvious that a very great waste of money and a great enhancement of expense would follow if the large establishments of the Departments were constantly kept idle from the necessity of waiting ten days for every ryot to mark the boundary of his field.

Then, again, the only machinery provided by the present law, for the settlement of disputes regarding boundaries, was that of a Village Punchayet, and this was not only a very unsatisfactory and a very dilatory mode of procedure, but it was also one that, however well suited to disputes between ryot and ryot, was wholly unsuited to cases in which the boundaries of large zemindaries might be disputed, and in which the parties might be a large zemindar on the one side, and the Government Officers on the other.

It was proposed to substitute arbitration for a Punchayet, and the Sections of the Civil Code of Procedure, which prescribed the course to be followed when arbitration was had recourse to, had been adopted.

Lastly, threats had, in some cases, been held out of an action at law for trespass against the Survey and Assessment Officers when proceeding to perform their duties, and it was necessary so to legalize their proceedings as to protect them from such actions.

All these points were provided for in the Bill now to be introduced, and he had only further to say that, should the Council allow it to be read a second time this day week, he should ask that the Standing Orders be so far suspended as to allow the Select Committee, which might be appointed, to report upon it within one month, to avoid the great delay which was now constantly occurring to the Survey and Assessment Officers.

The Bill was read a first time.

INCOME TAX.

On the Order of the Day being read for the second reading of the Bill "for imposing Duties on profits arising from Property, Professions, Trades, and Offices"—

MR. WILSON rose and said:—

MR. PRESIDENT,—Sir, in rising to move the second reading of this Bill, it is not my intention to discuss the details of its provisions; that will be best done in Committee of the whole Council, after it shall have undergone a careful examination by the Select Committee, to whom it will be referred. I shall therefore content myself with referring, before I sit down, to some of the main provisions of the Bill, and to a proposed amendment in its construction and machinery, which has been decided upon since the Bill was printed, with a view of bringing it more in harmony with the existing revenue arrangements of the provisions. But, Sir, as this is the proper stage at which the principle of the Bill may be discussed, I hope I shall be excused if I make a few observations on the objections which have reached us with regard to our policy, of which this Bill may be said to be the motive power. When I explained our policy to this Council some weeks ago, I then expressed a hope that it would be freely discussed in the public Press, which, in a country like this, necessarily so limited in its means of giving expression to opinion through its constitutional institutions, acquires more importance than it possesses in a country with free representative institutions. The Government have therefore considered it to be their duty closely to examine and carefully to consider all that has been said or written in respect to our policy and our measures. In proportion to the scantiness of our means of ascertaining public opinion, we have carefully

availed ourselves of every opportunity which has offered itself for that purpose. We have not confined our observation to the European Press. We have with equal care consulted the Native Press;—and, upon the whole, we have little or no ground to be dissatisfied with the manner in which our proposals have been received. By the European Press our proposals have been understood in the spirit in which they were made as involving a policy which, however necessary for the moment to meet pressing emergencies, was calculated to yield great advantages hereafter, and which would assuredly lay the foundation of a sound and reliable system of finance. That the Native Press was likely to misunderstand, and to some extent to misrepresent our motives and our measures, was only to be expected; but I am bound to say that the instances which we have found of this are not numerous. Well then, Sir, since our measures have been open to public criticism for nearly two months, I may be excused if I shortly notice some of the chief objections that have been taken to them. In the first place then, we have been accused of class legislation:—we have been accused of studiously consulting the interests of Europeans, and neglecting those of the Natives: we have been accused of having one rule for ourselves, and another for the natives of India, whom we rule. Monstrous and preposterous as are these accusations, under the circumstances they might be considered as only natural in Native papers written for an object. But, Sir, I will appeal to those who did me the honor to listen to my very imperfect exposition of the views of the Government of India, to say whether all that I said and all that I proposed were not marked by a spirit entirely the reverse. I think I may say with confidence, and I am in the recollection of those who listened to me, that if there was one principle more than another on which I insisted, not only as the guide of the policy of the Government, but also as a test of the measures which we ought to propose, it was that of perfect equality between all classes of Her Majesty's subjects, whether Native or European, whether Official or Non-Official. Sir, this principle was the touchstone at once of our policy and our measures. And let me recall to you what those measures were. First of all we proposed great modifications of Customs Duties. On what principle were those modifications made? Here it is said that we reduced the duty upon what were called the *twenty per cent.* articles, chiefly consumed by Europeans, to *ten per cent.* Why was that done? Because, as I showed from the Customs returns, our revenue was falling in consequence of diminished consumption. A year before, the duty upon these articles had been raised from five to twenty per cent., and if we again reduce them, not to five, but to ten per cent., it was because the high duty was perceptibly leading to a diminution of our trade in those articles. But then it is said we repealed the Export Duties on raw materials out of a sole regard to European interest. Now, what did we really do? We carefully considered the character of each article separately, and when we found that the duty imposed upon it fell back in the shape of a diminished price upon the Indian producer, in those cases we removed it.—but when, on the contrary, we found that in consequence of the article being solely produced in India, and having no competition to meet with in the European markets, the incidence of the duty fell upon the foreign consumer—as I showed was the case with saltpetre—in that case we raised the duty by about sevenfold. And yet we are told that our measures were framed for European and not for Native interests. Again, was it in the interests of Europeans and against those of the natives of India that we raised the duty upon cotton twist from five to ten per cent.? Was it in the interests of Europeans that, for the first time, we proposed they should pay a fair share of the necessary taxation of the country, by having their profits, whether made here or in England, brought under taxation? Was it in the exclusive interest of Europeans that, for the first time, it was proposed that the

whole public service, from the Governor-General down to the youngest Civilian, shall contribute by an Income Tax, equally levied upon all, to the exigencies of the State? In the face of such measures, it is difficult to conceive that such an accusation could be made, except in the hope of embarrassing the Government by misrepresentations. These measures, so far as regards the Customs Duties, have already been in operation for some weeks, and it may be satisfactory to the Council to know what, even in that short period, has been the result. Upon the raw materials exported, which were placed in the free list, the duty which was lost in the first four weeks was Rs. 24,130, which sum must go to the encouragement and development of the production of those articles. Upon saltpetre the gain during the same period was Rs. 70,000, not to the loss of the producer in India, but at an enhanced price to the consumer in Europe, for already has the price risen there, as we know by telegraph, to the full difference of the enhanced duty, and upon enquiry I find that here the prices now paid, independent of duty, is precisely the same as it was before the duty was raised. So far, therefore, we could not have a better proof of the soundness of the principle upon which we proceeded :—and it is satisfactory to know that, during the time that has elapsed since the remissions of Customs Duties were made, our revenue from that source has shown a perceptible improvement.—So much then for the accusation of class legislation, of sacrificing the interest of the native to secure the approval of Europeans. If, Sir, we have received an unusual amount of support from Europeans, it has been of a most disinterested character, and one which can only have proceeded from a conviction that we were attempting to meet unprecedented difficulties with a firm determination not to evade our duty by having recourse to momentary and delusive palliatives, but to grapple with them in a real and practical way.

Pursuing the same policy, and with a view to open up the internal intercourse of the country as much as possible, the Government have arrived at the conclusion to abolish all tolls on the Grand Trunk Roads. They are few in number, and the cost of collection is fully 30 per cent. on the receipts, and they act as great impediments to intercourse in those immediate localities where they are placed. Simultaneously with the new taxes, these tolls will therefore be abolished, which we believe will be accepted as a great boon by the native community in their neighbourhood.

The next charge that is brought against us is that we are very unwisely imposing new taxes for the purpose of reducing the debt of India. I have received a printed letter, signed PHOBOS, in which he protests strongly against new taxes being raised for the reduction of the national debt of India. It is said we ought to accept that debt as England has accepted her debt, and content ourselves with providing for its interest. Sir, the Government accept that limited object of taxation. How it could have entered into the head of any man that, with a deficiency of six millions and a half for the coming year, the Government of India could have entertained so ambitious a design as to attempt, at such a moment, to redeem any portion of the public debt, I am at a loss to know. It could not certainly be from anything which escaped my lips, or those of my colleagues, for such a project has not even been named. No, Sir, there is a time for all things, and certainly when we are deficient, by six millions and a half, in the means to pay the interest of the debt, and other public charges, would not be the time to talk of redeeming the principal. But, Sir, if we have not entertained the design of redeeming the existing debt, we do plead guilty to the firm determination of using the whole influence which the Government possesses, in order to place our finances on so satisfactory as footing, that during a time of peace it shall, at least, not increase: we do plead guilty to the fixed purpose of using all our ability to change our condition from one of annual and increasing deficiency to one at least of adequate provision

for the absolutely needful demands upon the State.

But, Sir, the most serious, though at the same time the most improbable charge against us, is that of two courses which were open to us to make both ends meet, that is, by reduction of expenditure or by increase of taxes—we have deliberately elected the last of the two. Sir, this complaint pervades this large mass of Native Papers which is lying before me in more or less distinct terms, and the same has been insinuated if not directly made in other quarters. Here, again, I must say that I am at a loss to conceive how such an impression can have got abroad. That such statements should have been hazarded by the writers in those Native Papers, whose chief function is to misrepresent and oppose the Government, is not a matter of surprise, but that they should have been encouraged by others, I must own, excites my astonishment. I thought I had taken special care to express the firm conviction of the Government, that its first duty was, with the most unsparing hand, to curtail in every possible way consistent with the public interest and security, the expenditure of the State, and when the steps that we have already adopted for that purpose are all understood, it will be plain that we have not only professed, but have acted up to our professions. For what purpose was it that we proposed to take this Bill, the second reading of which I am now proposing, for a period of only five years? This is the chief new tax which we propose, and we take it as a temporary measure. Sir, it would have been worse than a grave error on the part of the Government, if we had come forward and asked you to impose new taxes upon the country, without having, in the first place, earnestly considered how far such a necessity could be avoided, and the object gained by diminishing expenditure. I trust there is no one who can believe that the Government of India would have been guilty of such an inexcusable piece of folly, or something worse. Can any one really believe that we should deliberately and gratuitously impose upon ourselves the unwelcome and arduous task of proposing new taxes? Can any man in his senses imagine that, before we came to the conclusion that such unpopular a course was an imperative duty, we had not carefully gone into the whole question of the Indian expenditure—with the means of judging too, which no one else can possess—before we arrived, I own unwillingly, at the conclusion that it would only be to continue in a course of self-deceptive palliations, and of hand to mouth contrivances, if we were to trust only to what could be done by way of reduction only to put our finances in a satisfactory condition. No doubt we might have taken this easier but delusive course; we might have persuaded ourselves and the public that time only was required to make the necessary retrenchment from the high expenditure of the mutiny: we might in the meantime have kept open a five and half per cent. loan, and when that failed have opened one at six per cent. We might have taken this easier course, have avoided the difficult task which we have imposed upon ourselves;—we might have drifted on a little longer under the plausible pleas which have been suggested—and have left a task still more difficult to be encountered by our successors. Sir, the result of our investigation was such, that we could not in our conscience and our duty to our country and our Queen adopt such an enticing but delusive course. When it is said that all our difficulties can be met by returning to the expenditure of 1856-57, let me recall to your mind what even that state was, and particularly what has occurred since then materially to aggravate it. I showed you, upon a former occasion, that even before the mutiny our financial position was a most unsatisfactory one. Your normal condition was one of annual recurring deficit, and constant open loans to supplement your revenue. Was that a state of things to be perpetuated? But I also called your attention to the fact that, in the meantime, the interest of the public debt had increased by *two millions* sterling. And what had taken place in the meantime with regard to

your army? Is there a single person from the Himalayas to Cape Comorin, whether Native or European, who has the interests of the British Government and of India at heart, who would quietly consent to see the Indian Army in the condition in which it stood in 1857? Numerically, no doubt, it may be greatly reduced. But the character of the army we must have in the future must be very different in quantity as well as in cost. Sir, taking everything into account which must go to make up the aggregate sum of our military expenditure for the future, you cannot compute the cost of each European soldier at less than that of four natives, and I believe, when the necessary allowance is made for reliefs, for Barrack and Hospital accommodation, that it would be nearer the truth to say that the cost of each European soldier is nearer the proportion of five to one than four to one.

But, notwithstanding all this, while we believe that it would be a mere delusion and deception to say that the military charges of India can, with due regard to the security of the State, be reduced to the rate at which they stood in 1856-57, yet we are confident of being able to make a large reduction from the present charge. To this end we have instituted measures which are already bearing good fruit. We have appointed a Military Financial Commission, which is prosecuting its labors with great success, both as regards the direct cost of the army, but even more with regard to the heavy subsidiary charges connected with Commissariat and other departments of expenditure. But when all is done, I say it would only be deceiving this Council and the public, if we were to hold out expectations that, with a suitable European Army in India, it will be possible to reduce the military charges to what they were before the mutiny by a very large sum. But I need not tell you that, whatever reductions can be effected, must be a work of some time to complete them, and, when we have so many distant authorities to deal with, of some difficulty: we must also bear in mind that even local Governments have their own difficulties in this respect to deal with. Take one example of very recent date. In the month of May last year, the Madras Government were very sanguine that they could, as far as they were concerned, make immediate and large reductions in their army. They then drew out and sent upon full authority to the Government of India, a detailed estimate of their military expenditure for the current year just about to close. The amount of that estimate was £2,780,000. Now we may be quite sure that those who prepared that estimate were in earnest. No one can doubt that. Well, what happened? In the month of October a proposal came up to the Government of India for the permanent establishment of a force, which would have exceeded in cost anything that had ever been dreamt of, for the Madras Army, and that, too, notwithstanding the establishment, in the meantime, of a very expensive but efficient police. About the latter end of December the Military Finance Commission, which had been appointed by the Government of India, visited Madras; when, as they have reported, they found that none of the measures of retrenchment which had been reported in May had been carried out:—and now the result is that, in place of a sum of £2,780,000 as the Madras Military Expenditure for 1859-60, I find the actual figures in our accounts to be no less than £4,300,000. It was only right, however, to say, that since the Commission visited Madras, a series of reductions have been put in progress. Now, I do not allude to this particular case for the purpose of imputing blame to that Government, but for the purpose of showing how much caution the Government of India, which is really, solely, and primarily responsible for the security of the country as well as for the adequacy of its finance, ought to exercise against the risk of relying implicitly upon sanguine calculations. In the meantime, as I showed upon a former occasion, the Military Expenditure of Bengal had been reduced in 1859-60, the current year, by upwards of three millions sterling, and further

large reductions are going on. In Bombay also the Government has engaged itself with earnestness in securing considerable reductions. But all these have been taken into account, as far as they are at present known, in the computed deficiency of *six millions and a half*. Still we have a well-grounded hope that we shall be able to effect during the coming year a very much larger reduction; for it is by that means only, in addition to the improved revenues which we hope to derive from our new taxes, that we hope to make ends meet. But when we compare the expenditure of India as a whole with what it was prior to the mutiny, do not let us commit the mistake of supposing that all the increase is to be charged to our military establishments, and that when they are reduced to the lowest point, there will not still be a large increase attributable altogether to our civil administration, and which, on all hands, it is admitted, must in the future rather be increased than decreased. Let us bear in mind that even with this deficit of six millions and a half, we are computing only the sum furnished under the restriction order for public works, and under the order that no increase whatever shall, in the meantime, be made in our educational establishments. If many works which are suspended are to be finished, if educational and other civil improvements are to progress, provision must be made for them over and above the computed deficit of next year. But let us look at our civil expenditure as it is even under the pressure of all these restrictions. In Bengal, including the North-West Provinces, Punjab, and all the new States under the direct Government of India, the expenditure other than military has increased from £13,359,000 in 1856-57, to £16,024,000 in 1859-60, of course including the increased charge of the public debt, and the civil establishments in our new possessions. In Bombay the increase has been from £3,492,000, to £3,806,000, and is less than in any part of India. In Madras the increase has been from £2,539,000 to £3,125,000. I speak of all charges other than military, to that, although there has been a steady though slow growth of revenue, there has also been a steady growth of expenditure of a civil character. No doubt, for example, it is quite true that the revenues of Madras have improved during the last ten years by about one million sterling, but it is also true that the expenditure, other than military, has increased also by a similar sum, while during the same time the military expenditure had crept up, even before the mutiny, by about half a million, and in the last year by upwards of a million and a half. Now, it is only fair to say that Madras is burdened, as far as these accounts go, and I think as far as any comparative statement is concerned, unfairly so, with the military expenditure of Pegu; but, on the other hand, Madras is charged with no share of the interest of the public debt, nor with any share of the Indian expenditure at home, nor with any share of the interest of the Railway undertakings, which are all directly or indirectly a charge upon the Exchequer of the Government of India. Sir, I hope we shall soon cease to have these divisional questions about finances or anything else, and that we shall learn that we really are one united Empire, with no other duty than to consult the interests of the whole equally and alike. Well, then, we come to the point. With this large increase of civil expenditure which, all admit, must rather continue to increase than otherwise, however much our institutions and establishments may be improved and rendered more efficient: with the necessity of maintaining a military force in the country of a much more costly kind than heretofore, however much it may be numerically smaller: with a necessity admitted on all hands, of having an improved and more costly police to supplement our smaller army than was maintained before the mutiny, with a known addition to the charge of our national debt of two millions a year, and, lastly, with a deficit of six millions and a half in the coming year, what could have been thought of a Government which, not having the courage fairly to face those difficulties, was blind

to facts into which it was bound to enquire, and endeavored to persuade itself and the public into a delusive belief that any possible immediate reduction to such an extent was possible? Sir, I can only say that neither the Governor-General nor any member of the present Government could lend themselves to so palpable a fallacy. No doubt we have endeavored to lay the foundation for such a development of our trade and other resources by the policy which we have had the good fortune to introduce, that, as was the case in England after 1842, we may fairly hope for such a growth of our income from other sources, while in the meantime every possible economy will be made in our military expenditure, as will enable us to dispense with that portion of the Income Tax which is required for the public Exchequer. On this account we ask you to give us this Bill only for a limited period, and I confidently believe that we shall require no extension either of the period, or of the amount of the tax. In the meantime we have already inaugurated a new system of annual budgets, estimates, issues and audit, which will secure to the Government of India the most complete check over every branch of the public expenditure, and we trust will afford the best guarantee against any wanton or needless expenditure. In asking this consent to read this Bill a second time, I give to this Council, on behalf of my colleagues and myself, the most solemn assurance, that we consider it to be essential for the safety and security of the best interests of India, and that no opportunity shall be lost, on our part, of reducing expenditure whenever it can safely be done.

The next objection to this measure, which I shall notice, are embodied in two petitions, I believe emanating from the same body; the one presented to this Council, the other sent direct to myself. They proceed from a most respectable class of persons employed in the public and other offices as Clerks. Their prayer is, that in place of charging a uniform rate of tax upon all incomes above four hundred rupees, we should adopt a graduated scale, beginning with 1 per cent. upon lower incomes, and going up to six per cent. upon higher incomes. Sir, if the Government feels itself quite unable to assent to this proposal, it is not that they do not sympathise with the class from whom this petition proceeds; for we are well aware that any additional charge upon small incomes is no doubt felt as a hardship. But in the first place I would respectfully remind these gentlemen, who are chiefly employed in our public offices, that the tax is really required to enable the treasury, upon which they depend for their employment and their pay, to perform its obligations. In the next place I must say to all, that it is no part of the functions of fiscal arrangements to equalize the condition of men. The lot of man is fixed by thousands of inscrutable causes, and if a Government were to attempt to produce an equality by distributing the incidence of taxation, it would undertake a task, the end of which must be confusion and disappointment to all concerned. No, Sir, it is our duty to adjust our taxes upon a clear and general principle with as much equality as possible, and then to leave to their full and free course all those general principles of competition and other elements which determine the lot of man. But this at least we may say in favor of an Income Tax, which cannot be said in favor of any other tax, that its incidence falls upon each person in the exact proportion to his means, and I doubt not that it will only be a pleasure to any one of the gentlemen signing these petitions to find, as time goes on, that they have a larger sum to pay, as that will be another mode of saying that they are in receipt of a better salary. But, Sir, from the experience of England, I would hold out to this class of persons the greatest hope of increased comforts from the policy the Government is pursuing. In 1842, when Sir Robert Peel first introduced the Income Tax, there was no class in England who then suffered more than educated men, who had to rely upon their own efforts for a subsistence. At that time the whole

*Mr. Wilson

amount of income upon which the tax was paid under Schedule E. which represents clerks in public offices, were under ten millions a year. In 1848, only fourteen years after the first return, such had been the increased demand in the meanwhile in consequence of the rapid development of our trade and the formation of public companies for this class of talent, that I find in the returns of that year, the annual income upon which the tax was paid, exceeded sixteen millions a year. Is this increased demand not already beginning to make itself felt in India? Is there any doubt that the demand for clerks and their condition has already improved? I can say that scarcely a week has passed since I have been in India, in which, in one shape or another, this fact has not been officially brought to my notice in connexion with the public establishments. Sir, our financial policy stands upon the firm and immovable basis of strict equality to all alike. We cannot swerve from that principle to the right or to the left. Exemption in one case will open the door to exemptions in others;—and once to begin upon such admissions, would be to break down our whole fiscal system. One of the native papers, lying before me, quotes the ancient Hindoo poet Kalidas, who, in describing the actions of King Dilip, said, that he "took taxes from his people, not in order to fill his treasury, but for the public good, in the same way as the sun attracts vapours from the earth to restore them back again in fertilizing showers." The same may be said of the Income Tax introduced by Sir R. Peel in 1842, and if we patiently follow the same policy, we may hope hereafter to see the beneficial fruits of it in India, and to none more than that large and increasing class of well-educated and intelligent natives, who are now candidates for employment in the more responsible walks of life.

But, Sir, I have yet another class of objections to deal with. There are many who, admitting to the full that additional taxation is necessary, yet demur to the nature of the taxes which we have selected. I know it is extremely difficult to administer an unpleasant dose in a palatable way: there are many things so disagreeable in themselves, that in no form in which you can present them will they be cheerfully accepted, and the most natural of all things is to object to the operation in the form it assumes. But it is generally not the form but the thing itself that is distasteful. This applies particularly to taxation. Some advise us strenuously to fall back upon the old transit and towns customs dues, because they are more in unison with ancient customs. Is it possible that we can be asked both to affect the people of India with new taxes, and to deprive them of the most important improvements in their material condition which British rule has conferred upon them? Is that trade and intercourse which are doing more to enrich India, to dispel superstition, to civilise the people, and to bring them into harmony and sympathy with European views, to be checked and destroyed by the erection of barriers at every town and custom houses at the boundary of every zemindary? It requires no reflection to reject such a proposal. But there is another and more favorable scheme, to impose a Succession Duty, and that chiefly by those who object to the inquisitorial character of an Income Tax, of which quality, let me say in passing, it will be in a great measure deprived by the steps we are taking for its assessment. But do those, who propose a Succession Duty, intend that it shall apply to land and real property only, or that it shall also extend to personal property? If the former, then we object to it, because it simply tends to aggravate the most glaring defects in our existing system, which draws so disproportionately from the land: but if it is intended to include both, then we object to it, because the difficulty of assessing the hidden wealth of rich natives to a Succession Duty, would be an enormous aggravation of that of assessing annual income. But a Succession Duty has recently been tried in England, where, more than in any other country, it ought to have been productive. In 1853 I was in part responsible for the succession tax imposed by Mr. Glad-

stone as one of the means of repealing the Income Tax in this year. The experiment failed. It does not produce more than one fourth of what the Revenue Authorities anticipated, and Mr. Gladstone, in his speech two months ago, admitted its failure as one of the reasons for still retaining, and in an extended form, the Income Tax. But if there were no other reason against these taxes we have one peculiar to our position and to the rule we have laid down for our guidance, which of itself would be fatal to them. The one rule which we cannot consent to transgress is that whatever burdens we impose they shall be borne equally by all alike, European and Native, by Official and Non-Official. Now, upon whom would Town duties directly fall? Upon the natives only, or nearly so. No doubt Europeans would suffer less in their trade, while the State would gain nothing in its Exchequer. Then a Succession Tax—upon whom would it fall? Almost exclusively upon the natives. As a rule, Europeans and Officials of the Government would entirely escape. Such a result would belie our professions to deal equally with all Queen's subjects, and this I believe can alone be done by the measures we have proposed. By the Income Tax we spread the burden equally upon all alike, but strictly in accordance with the means of each; the property of the poor we entirely spare; from the modest income we take sparingly, from the large income freely.

The last objection to our measures, which I shall notice, is to the novelty of the taxes, and to their being distasteful and repugnant to the feelings of the natives. That objection has reached us chiefly from Madras. But I must say that there appears to be much difference of opinion in that Presidency upon this subject, and not only much difference, but not a little variability of opinion. It will be in the recollection of the Council that, when the Bill of my Honorable friend opposite (Mr Harington) was published and circulated last year it had assumed the character of a License Duty and an Income Tax, and it was in that double form in which it was canvassed and discussed. The reports which came up in respect to that measure were most carefully examined, and none were submitted to closer scrutiny than those from Madras. Some of the officers who reported, were opposed to the Bill altogether: others were opposed to many of its provisions while expressing approval of the object in view; and others expressed a considerable support to the Bill, nearly in the form in which it stood: and several admitted the suitability of the general scope of the measure—why? Because it was in accordance with the long established habits of the people. On this point, one very able officer states as follows:—

"On the subject, therefore, of the general effect which an Income Tax is likely to have on the native mind, I shall be brief in my remarks. The Government are aware that additional taxation of all descriptions must be unpopular, and that the native towns have always shown an impatience of it. But a tax on the profits of trade is no novelty, either in Hindu law or practice. In a minute on the existing *Mohturfa* Tax, Mr. Walter Elliot, when a Member of the Board of Revenue, wrote as follows:—It is an ancient tax, declared to be legitimate in old Hindu books, and the verse in Menu, which restricts the land tax to one-sixth of the produce, declares 2 per cent or one-fiftieth to be the proper tax, on cattle, and the profits of trade, adding that a mere trifle should be taken from the meaner persons who subsist by traffic. There is no doubt therefore that taxes on income are sanctioned both by ancient Hindu law and usage."

Now, there is no doubt that this gentleman does, in his report, state reasons against the advisability of introducing any new taxes at that time for special reasons, but certainly not on the ground so much urged now. On the contrary, he concludes by recommending "that the law, when introduced, should be accompanied by a proclamation, pointing out that by the Hindoo law and usage the profits of trade have been always subject to taxation, and that it is only equitable that traders and professional persons who enjoy the benefits of our Government, and have been relieved from many taxes (Town and Transit Duties, Sea Customs Duties on the coasting trade, Special Duties on Tobacco, Betel, &c) should contribute

to the wants of the State." Again I find the following from another very eminent officer who, of late, has had more than ordinary means of observing and knowing the native mind:—

"A tax on the profits of trades and professions is undoubtedly sound in principle; and being in its nature familiar to the people of this country, it would be more acceptable generally, and therefore more expedient than taxation in some other form, foreign to their habits and customs, and consequently distasteful as an innovation. I believe the *visavadi* tax of the Ceded Districts to be as cheerfully paid as any tax could be, and that its extension to other districts would cause less dissatisfaction than the levy of an impost, more perfect in theory, but to which the people are unaccustomed. Perhaps the strongest objection to the *visavadi*, and one which applies with still greater force to the *Mohturfa* tax, is the fact of its falling upon the petty trader and the struggling artizan, while it allows the rich to go free. But the object of the proposed Bill is exactly the reverse of this. It reaches the wealthy, and exempts that large body of the industrial classes whose profits only suffice for a bare subsistence. In this point of view, as regards the Presidency of Madras, at least, it substitutes a positive advantage for a positive evil. It is still a tax upon industry, but the tax has shifted its incidence from the poor to the rich. Its practical application will scarcely extend beyond the large towns of each district, thousands of villages will be relieved from the petty exactions in a hundred different forms made under cover of the *Mohturfa*; and the useful and industrious community of weavers, by whom that tax is mainly contributed, will rise from their present depressed condition to comparative comfort and wealth.

"The opinions which I have been able to collect from the Deputy Collectors are generally in unison with my own, and with regard to the principle of the Bill none, except the officer from whom I have quoted above, are decidedly opposed to it, and the majority recommend a modification of its more arbitrary provisions.

"Independently of the general clamour which every new tax must raise, I am inclined to think that the justice of a Trade and Profession Tax will commend itself to the native community, who have been so long accustomed to it, no less than to Englishmen, who pay it in the shape of Income Tax in their own country. The *visavadi* tax upon the profits of trade is still in force in the Ceded Districts, though in the other districts of this Presidency the less justifiable tax of *Mohturfa* on the profits of persons exercising manual arts and professions has alone been retained. Under the previous Governments, persons of all professions and trades had to contribute their quota of taxation equally with the cultivators of land.

"In a country like India, where capital and all sorts of skilled labor and professions enjoy a monopoly, the profits of trades and professions must be the least objectionable objects of taxation to meet the present exigencies of the State, provided the tax is so moderate that it can neither check the spirit of industry, or frugal saving to any material extent, but will have the effect of restraining wasteful expenditure."

Another officer says:—

"The real object of the Bill is to tax the profits of trades and professions, and to secure this, I consider it is far better to proceed upon the basis already existing in this Presidency in Regulation IV of 1818, and Regulation V of 1832, regarding the *visavadi* and *Mohturfa* taxes. The former, it is true, applies only to the two Ceded Districts, but the practice of the division of the tax, whether called *visavadi* or *Mohturfa*, according to the process belonging to the former, exists in others also. If the provisions of these regulations were expanded, so as to include all the classes contemplated in the present Bill, the main object would be secured, and the measure would thus be in accordance with the usages of the country and the feelings of the people, without the irritation, misapprehension, and other evils, which would be caused by the proposed new measure.

"One eminent advantage of making the existing system of the *visavadi* and *Mohturfa* taxes the basis of the new measure is, that instead of bringing the Collector in direct antagonism with each individual to be taxed, it leaves the amount of tax for each village to be apportioned by the people among themselves, and this share in the process of taxation of themselves must be far more satisfactory to them, and will go far to reconcile them to the tax itself.

"In short, the tax should be put forward otensibly as an Income Tax, and made to embrace all classes, care being taken to accommodate the process of its application to the public state of mind and customs prevailing among the numerous and varied communities of the country."

Another officer says:—

"The proposed tax seems to me to be nearly identical in character with the existing *visavadi* and *Mohturfa* of this Presidency; and I believe that in its practical operation, it will be attended with the same evils as have led to their almost universal condemnation of those imposts."

Then, another says:—

"There can, however, be no doubt that the produce of such a tax would be very considerable. The classes who would be subjected to its operation in Malabar are very numerous, enterprising, and wealthy. It appears to me equally clear that, always provided that the

mode of levying such a tax is unobjectionable, none more equitable can be proposed. This alone of all our financial measures touches the classes who have derived the most benefit from the State, for commercial prosperity is peculiarly the result of peace and security."

Another adds :—

"It has long been my desire to see some provision made for taxing those trades and professions which hitherto have been entirely exempt from making any direct contribution towards the expenses of the State. The Draft Bill appears to me to supply what was wanting, effectually and fairly.

"The retention, as a source of revenue, of the *Mohturfa* tax levied under Regulation V of 1832, is, I consider, desirable. In this respect I know I am opposed to many high and experienced authorities ; I, nevertheless, believe the tax to be a just one when properly and carefully levied, as it might long ago have been, had there not been so much agitation in regard to its abolition."

And the last I should quote, says as follows :—

"Assuming that there exists an absolute necessity for further taxation, this Bill is, so far as it goes, unobjectionable in principle ; under its operation large classes who now pay no taxes will be made to contribute to the exigencies of the State, and a considerable revenue will be realised. The points to be considered in treating of the propriety of at once adopting this form of taxation seem, therefore, to resolve themselves into—1*st*. The practicability of carrying the measure into effect without rousing a degree of discontent, which it is ever unadvisable to awaken simultaneously over the whole face of an Empire. 2*nd*. The expediency, or otherwise, of giving a common ground of impatience (whether well founded or otherwise does not much matter) towards Government to so many classes of our subjects at once."

Another officer goes the length of showing that the new taxes proposed would be an absolute relief to those districts in the Madras Presidency where the *visavadi* and the *Mohturfa* taxes now prevail. Now, I admit, that it is always dangerous to quote parts of documents of this kind : and that in some of the reports, to which I have referred, there are other objections stated to the Bill of last year, but very many of which have been remedied altogether by the forms in which the two separate Bills are now presented. Again, I must admit that some officers, whose opinions, I have no doubt, are entitled to equal weight, express strong objections to the Bill altogether, but, again, many of them on grounds which are remedied in the present Bills. But what I want to show is that there is not that strong feeling against these measures that has been represented in some quarters, and especially that they are neither so novel nor so repugnant to native customs as has been represented.

I cannot leave this part of my subject, without referring in two words to a communication I have received from the Chamber of Commerce of Madras. In my address to this Council, I referred, on public grounds, to an opinion which had been expressed in some quarters, that Madras, for certain reasons, should not be called upon to contribute additional taxation to meet the present difficulties of our Exchequer. The President of the Chamber of Commerce has written to express a hope that I shall be able to acquit the European Community of Madras of what they would regard as a stigma, if applied to them. Sir, I can have no difficulty in saying that I had no intention whatever of applying this observation to them—on the contrary, having read a copy of the proceedings of that respectable body in September last, before my arrival here, I am bound to say that no body of gentleman could have expressed in more plain terms their willingness to bear their fair share of taxation ; and I will go further and say that it was to some extent, from the liberal views expressed by the commercial community in the Presidency towns, that the Government was encouraged to adopt the policy they have. On this point I will only add that my only object in making those remarks was to discourage a sentiment which the Government had observed with regret, and nothing was further from my wish than to give umbrage to any one. If any remark I made has done so, I can only say that I deeply regret it. I only trust most sincerely, that we shall see an end to these sectional and party feelings ; that the policy we shall pursue will be calculated to unite the whole Indian Service

into one, and that, without regard to locality, merit will be sought out and rewarded by the high and honorable appointments of the State. It is by this alone that we can hope for real unity and co-operation through the whole services. I have alluded to some officers who had reported unfavorably to the Bill of last year, and even against any attempt to impose fresh taxes of any kind, except under the greatest urgency. It is the practice, with regard to measures before this Council, to encourage the fairest discussions on the part of our public officers, and great benefit is derived from this practice; but of course much difference of opinion must prevail, and unanimity especially upon questions of taxation can never be expected. But at least this we are always sure of: whatever may be the private views of our officers as to the merits of particular measures, as soon as they have been adopted by this Legislature and have become law, the greatest reliance can always be placed in the most earnest and devoted efforts of all alike to give full effect to them.

Sir, I have already said that I did not intend, on the present occasion, to enter upon the details of the measure which I am about to ask you to read a second time. But there are one or two points upon which I would wish to make a remark. As the Bill was first drawn, I am told that an impression was produced, that it was our intention to divide India into new districts, and to establish a new machinery expressly for the purpose of this Bill. Such is not our intention. We adopt exactly the same districts and divisions and the same machinery as are at present employed with regard to our general revenue system, only that we give power to the local Government to divide districts when they are too large for the convenient working of the Bill. But in the Mofussil, as a rule, we neither change districts nor machinery. The working of the Act will fall under the existing Revenue Authorities, who are much the most competent to carry out its provisions, and who naturally possess the greatest confidence of the people. With the Collector, however, it is proposed that there shall be appointed other officers, together with one or two Native gentlemen, who shall act as a committee in settling assessment and in hearing appeals. And there will be appointed for each district, either the Collector himself, or the Judge, or some other high officer in whom the people have confidence, as a special commission, who shall be empowered to assess and arrange for the receipt of the Duty from those who wish to be secretly and privately assessed. In the Presidency towns the machinery will be different. There will be General Commissioners, of whom two or more shall be appointed from outside the service, to conduct the general assessments and appeals, and there will be Special Commissioners for private and secret assessments. Contrary to the general impression which prevails, there will be no power with any of the Commissioners or political officers, either in the Presidency towns or in the Mofussil, to compel the production of books; or of accounts or papers of any kind. But in the case of appeal, each party will be at liberty, voluntarily and of his own free will only, to produce any books or papers, or any other evidence he pleases in support of his claim. These appeals will be held with closed doors, and all concerned will be sworn to secrecy, so that no publicity can be given to whatever may transpire. In the Mofussil great discretion will be given to the local Government to assess communities in any way best suited to their condition and circumstances, either by individual assessments, or by aggregate assessments on towns, or in any way through a Punchayet and the heads of trades. But even in the case of aggregate assessments being resorted to, we give the right to any individual to claim to be singly assessed. With regard to land, the assessment will be most simple, and can be made from the Collectors' own books, the rule being that the profit shall be assessed at half the Government rent. But here again a right is given to every Zemindar, when he can show that he has not a clear

profit equal to half the Government rental, to claim to be assessed at the proper amount. Again, all persons will be allowed to compound once for all, for an annual fixed payment for three or five years, the whole period of the duration of the tax. The limit of the Bill in its duration is five years, and in its amount of tax, two and four per cent. in different cases, and as far as human foresight can predict, the Government feels assured that those limits will not be extended. This at least I can positively say that there is not the most remote intention of extending either the one or the other.

Sir, I sincerely wish I could here conclude what I have to say. But there is one subject of a most painful character, to which it would cardly be respectful to this Council if I were not to allude to, however briefly. While we have received the most cordial and unanimous support from all the local authorities from whom we have had communications up to this time, with one single exception, the opposition in that case has assumed a character which, I will venture to say, has no parallel in Indian History. I have reason to believe that those whom I now address were as deeply and painfully impressed with astonishment at seeing certain documents proceeding from a subordinate Governnent in the public prints a few days ago, as the members of the Government themselves could possibly be, and their astonishment and pain must only have been greatly increased when they saw the tone in which those documents are conceived and expressed. Unless it had been intimated to us expressly that they had been made public on authority, of course we could only have arrived at the conclusion that they had found their way surreptitiously into print. But, unhappily, no secret is made as to the means by which they obtained publicity, and that too, before they had even reached the Government of India. Sir, with regard to these papers, the Government of India can have no doubt as to the course which it is their duty to pursue. The public interest must obviously preclude us from entering into such a controversy,—and, but for their publication and the notice, slight as it may be, which thereon seems due to this Council, I should not have referred to their existence. The Government of India have taken such steps as are due to the public interests and their own position in order to obviate the serious and grave mischief which it is possible may be caused by this act of what I cannot but term a lamentable indiscretion. Sir, it would be idle not to acknowledge that we feel all the dificulties in which the finances of India stood before, and the arduous character of the task we had undertaken, enormously aggravated by these proceedings in a quarter where we had the least right to expect it; but, on the contrary, whatever may have been the individual view entertained, we had a right to look for support. But, however much aggravated we feel our difficulties to be, we cannot for a moment hesitate in believing it our duty to persevere in the measures which have received the stamp of such an extensive public approval, as being based on equitable, broad, and intelligible principles, calculated as, we trust, they are to promote the lasting good of the country, and to ensure the future prosperity of India. Sir, responsible as we alone are, for the Government of the country, and for the condition of its finances, we cannot for a moment consent to abnegate either our functions or our responsibility, whatever the amount of the difficulties which we have to encounter. We have, in the full and conscientious exercise of our duty to our Sovereign and our country, taken steps within the scope of our own responsibility. In that course, aided by the support of this Council, and we believe by that public opinion which has already ratified our policy, we shall only be impelled to stronger efforts to develope for the public good all the advantages which we feel the utmost confidence must flow from the course we have recommended this Council to adopt. And, Sir, we know that when these measures shall have become law, there is not a public officer in the service of the Crown in India, whose duty it will be to administer these laws,

upon whose support we cannot count with the utmost certainty. And we have no doubt that, exercising that sound sense and discretion which they are well known to possess, the difficulty in giving effect to these laws will be much less than many of the duties which they have had frequently to undertake. Such, I am happy to say, is an assurance we have had from many quarters. I shall therefore conclude by moving that this Bill be read a second time. I shall then move the suspension of the Standing Orders, in order that this and the Bill for licensing trades may be referred to a Select Committee, with instructions to submit their report this day fortnight.

SIR BARTLE FRERE seconded the Motion which was carried, and the Bill read a second time.

LICENSING OF ARTS, TRADES, AND PROFESSIONS.

The Order of the Day being read for the second reading of the Bill "for the Licensing of Arts, Trades, and Professions"—

MR. WILSON said, he would not trouble the Council with any observations on this Bill, but would simply move that it be read a second time.

MR. SCONCE said, the form in which the Bill had been drawn seemed to him to present a good deal of practical difficulty. It was a Bill to license arts, trades, and professions, and the license was proposed to be applied to four classes: artisans, retail dealers, large and small manufacturers, and members of professions. The first and lowest grade was fixed at one Rupee, which was payable by artizans. The highest was ten Rupees, payable by wholesale traders, manufacturers for retail and wholesale, and members of professions. In looking at the Bill or rather in looking at the manner in which it was proposed to give effect to the measure, it seemed to him that the officers who would be employed for the purpose, would have the greatest difficulty in regulating the imposition of the tax. He would take the last and highest grade, for which provision was made. Every member of a profession should pay ten Rupees to exercise his profession. Now, he would ask what the word "profession" meant? Such a word was more or less applicable to the Presidency Towns. But this was not a Bill for the Presidency Towns alone. It was also applicable to the Mofussil. We all knew that in England immemorial usage spoke of three learned professions. Not that all professions did not exceed three, or that other professions were not learned. But, in recognition of the special education required for the law, medicine, and the church, these professions had been so spoken of. If we were, in any sense, to take the above as a guide, what would the word "profession" mean as applied to this country? As to lawyers, there were vakeels and mooktears. There were vakeels in Moonsiffs' Courts, vakeels in Sudder Ameens' Courts, and vakeels in Judges' Courts. Then again mooktears were a sort of law agents, though to designate them as lawyers might be a desecration of the term. Now, if they looked to a vakeel in a Moonsiff's Court, or a mooktear in a Collector's Office, they might find that these persons received five Rupees a month. To take therefore from them the universal license fee of ten Rupees seemed to him to be quite out of the question. There might be other occupations in life intended to come under the term "profession". He did not know whether the term was meant to apply to clerks. Possibly, any public servant, as a Moonsiff or a Judge, might come under that designation. If that be the case, it was certainly anomalous to take alike from the Moonsiff and the Judge. Again, if they looked to the profession of physic, who were the persons in India who would take out licenses in that capacity? There was a class called *koberajas* and *Buddos*, some of whom worked with charms, others with more potent applications. Then there were inoculators or *tieca-wallahs*, as they were called. It might be right, on other grounds, to insist on the substitution of vaccination for inoculation. But these grounds were foreign to the purpose of this Bill. These seemed to him to be some of the difficulties, which presented

themselves. Then if they came to the Church, how would the Bill be applied? He felt that there was something ridiculous in the comparison, nevertheless he apprehended that *poojaries* and *poorohits* among Hindus, *moollahs* and *katibs* among Mahomedans would be subject to a license as members of the clerical profession, according to their several creeds There were other classes with regard to whom he felt there would be great difficulty; one common class was that of schoolmasters. Among Hindus they were called *Gooroomoshas*, and among the Mahomedans *Meeahjees*. They were certainly members of a profession, but every one must feel that it was impracticable to license such men at ten Rupees each, and he thought the Bill ought to contain a full specification of the classes included in the term "profession." Then there were fishermen; reasonable doubts, it seemed to him, must be felt whether to class them as members of a profession, or as traders, or artizans. Then, again, there were sailors, designated in the seaport district to which he had been long attached, as *clashies*, *tindals*, and *serangs*; and these, too, probably would be held to be members of a profession, being neither artizans nor traders. He did not know whether it was intended, by this Bill, to tax them as such or not, but he thought something ought to be done to show what the intention of the Bill really was with regard to that class. He might remark that in the Interpretation Clause of the Income Tax Bill, a definition was presented of a trade and of a profession, but he apprehended that this definition would not help them in the Bill they were now considering. It was there said that the word "trade" should include any manufacture, and any business, adventure, or concern in the nature of a trade. Now this did not say much else than that a trade might be any thing in the nature of a trade; and as a profession was defined to be any other business, the distinction could hardly assist us in classifying different occupations under the License Bill. In the Mofussil, people followed various occupations, which Collectors could not of themselves agree in distinguishing as artizans or manufacturers. Carpenters and blacksmiths were no doubt artizans, but there was one class of carpenters who were boat-builders, that is, those who were connected with boat-building establishments, and how would they be treated? Again, he should have thought that weavers were at least small manufacturers; but, if he mistook not, the Right Honorable Gentleman, in his financial statement, had spoken of them as artizans. Now, the Bill did not solve such a doubt as this which was very important to the parties concerned, for an artizan might have to pay one Rupee, while the manufacturer would have to pay four Rupees. Again, women and sometimes children would be found to be spinners, and it was right we should know how they were to be classed. In like manner there were confectioners, whose was the commonest occupation in the Mofussil; what were they, artizans or dealers? He might enumerate other classes. In the town, for example, to which he was attached for several years, there were poulterers, who were employed in feeding turkeys, and on whom a tax also might be levied.

With regard to the details of the Bill, these were some of the objections which he entertained. With reference, however, to the varying scale of taxation, he could not help connecting this Bill with the Bill which had been read a second time. Taking again the case of a member of a profession, suppose a member of a profession earned 100 Rupees a year, they would impose on him a licensing fee of 10 Rupees, that is, ten per cent. In the same manner, suppose a trader or a *moody*, as he was called, who sold rice, split peas, and tobacco, if he earned 100 Rupees, the License Duty of 4 Rupees would amount to four per cent. on his income, while in the Income Tax Bill we professed to exempt all incomes under 200 Rupees. Another objection was that the humblest artizan, the poorest tradesman, and the member of a profession who exercised the smallest occupation, would be compelled to pay equally with his more favored brethren, and the Collector had

no choice in the matter. In the Mofussil, on market days, people came from distant villages, bringing with them vegetables, baskets of paun, rice, &c.; were such persons to be included under the provisions of this Bill? In short, it seemed to him that the Bill was indefinite in its terms, arbitrary in its operation, and unequal in its incidence. If he might offer a suggestion, he would propose a graduated scale for persons in the receipt of limited incomes, commencing with eight annas on a hundred Rupees, and extending to one Rupee on incomes from 100 to 150 Rupees, and so on. In short, he would assimilate the principle of this Bill to the principle of the Income Tax. But as it now stood, he thought the Council ought not to accept it.

MR. WILSON observed, that he must say that the speech of his Honorable friend had relieved his mind of a considerable amount of difficulty which he felt with regard to its details, and if, as he hoped, his Honorable friend would consent to sit on the Committee to whom the Bill would presently be referred for consideration if it passed the second reading, his Honorable friend would have it in his power to afford the Committee much valuable assistance. He (Mr. Wilson) felt no hesitation in saying that most of the objections which his Honorable friend had urged had also occurred to his (Mr Wilson's) mind, and he had no doubt that his (Mr. Sconce's) intimate and accurate knowledge of the country would be turned to very useful account. But certainly this was not the proper stage to discuss the several points to which his Honorable friend had adverted. The only point alluded to by him, which touched the principle of the Bill, was that we should adopt a graduating scale of licensing fee, but he thought that, after the experience the Council had last year with regard to the Bill introduced by the Honorable Member for the North-Western Provinces, it was not advisable to attempt a graduating scale. But as this was a matter of detail, and did not involve the principle of the Bill, he hoped his Honorable friend would consent to act on the Committee.

The Motion was carried, and the Bill read a second time.

INCOME TAX; AND LICENSING OF ARTS, TRADES, AND PROFESSIONS.

MR. WILSON moved that both the above Bills be referred to a Select Committee, consisting of Mr. LeGeyt, Mr Harington, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

MR. WILSON then proposed to suspend the Standing Orders, in order that the Committee might be able to present their report within a fortnight. He took that course because the local Governments had, several weeks ago, been furnished through the post with copies of the Bills, and they had been informed that it was intended to pursue the course which he now proposed. After the great discussion that had taken place on the subject of the Bill introduced by the Honorable Member for the North-Western Provinces, the Government of India were of opinion that no good was likely to arise from delaying the passing of the present Bill and allowing it to be proceeded with in the usual course; and that, if the Committee were to sit and discuss the various provisions of the Bill day by day, the task would be completed within a fortnight. He would therefore propose a suspension of the Standing Orders for the purpose to which he had referred.

MR. FORBES said, he thought it would be better if the Select Committee did not present their report until after the arrival of the second steamer, which would be about the 28th of this month, when a reply might be expected from the Madras Government to the communication which had been addressed to them.

MR. WILSON then withdrew his motion and, in lieu thereof, moved that the Standing Orders be suspended, in order to enable the Select Committee to present their report within three weeks.

SIR BARTLE FRERE seconded the motion.

MR. LEGEYT said, he could not pass over the Right Honorable Gentleman's proposition to instruct the Select

Committee to report to the Council, without stating that he felt a strong objection to it. He thought that if ever there was a Bill before that Council that required to be fully and generally understood by the persons to whom it was to be applicable, it was the Income Tax Bill, which had passed a second reading. How, he would ask, were the inhabitants of the more remote districts of the Western Presidency, in the short space of three weeks, to gain this knowledge? The Right Honorable Gentleman had stated that the Bill had been transmitted to Bombay about the middle of March. Up to the 6th of the present month no publication of it had taken place in the Government Gazette, and he believed none would take place until the proceedings of this day should reach Bombay a fortnight hence. What chance then was given to the mass of the people, affected by the Bill, to express their concurrence or disapproval of it? It was quite clear they would have no such opportunity, and the Bill would go forth with the additional unpopularity attached to all tax measures that the usual forms of publication had been dispensed with. It was to avoid this he was anxious, and however desirable it might be that no time should be lost in placing the products of this Bill at the disposal of Government, yet speed may be gained at too dear a cost. He (Mr. LeGeyt) had no wish to throw any obstacles in the way of the Right Honorable the Framer of the Bill. He, on the contrary, was anxious to render the Bill as effective as possible and to avoid, as much as could be, the opposition from the masses it would probably meet with. The Right Honorable Gentleman had, in the eloquent and lucid speech just delivered, showed the grounds on which the Supreme Government had resolved to adopt this mode of taxation. It was surely desirable to modify and soften down the opposition it would generally encounter. He believed, by being well understood, this object might in a degree be gained, and then why fail the object by adopting an unusual course for the sake of saving a few weeks' or days' time. He hoped that even one more week would be added to the proposed time, that would enable the inhabitants, at least of the Western Presidency Town, to send up their observations. Three weeks in the ordinary course of business would not admit of this, and then, again, if he understood the proposition rightly, the usual course of waiting, until the time allowed for reporting had expired, would not be adopted in this instance, but that the Committee would at once proceed to analyse the Bill, so as, at the end of the prescribed period, to have their reports completed.

SIR BARTLE FRERE said that he felt quite sure he was expressing the feeling of his colleagues when he asserted that nothing was farther from their wish than to hurry through these Bills, or to abridge the time necessary for a reasonable discussion of their provisions. But he trusted that the Honorable Gentleman would reconsider his proposal to extend the period proposed by the Right Honorable Mover of the Bill for discussing this measure. Was it with regard to the principles of the Bills or their details that he wished for further time for discussion? If, with regard to the principles, he submitted that every principle involved in these Bills had been abundantly canvassed in the course of the discussions on the Bill of last year, and there was not a person who was likely to offer an opinion of any value who had not long since made up his mind on those principles. It was now many weeks since the Right Honorable Gentleman had made a very full and clear statement of the proposed measures, and they had already received a great mass of criticism, official and non-official, from all quarters regarding the principles involved. But, as regarded the main principle of direct taxation, it seemed generally agreed that there was nothing new to be said.

Then, as regarded the details and the precise form in which the measures were now brought forward, he (Sir Bartle Frere) contended that it was mainly from the local Governments, from the Presidency Towns, and the principal officers of Government in the

Mofussil, that they were likely to receive valuable criticism and suggestions, and the Honorable Gentleman would find that there would be ample time for their receiving such comments from all quarters before the Council considered the Bills in Committee.

It was a peculiarity of our position in India that there were few direct means of consulting public opinion, except at the Presidency Towns. From such quarters we had already received, and were daily receiving, opinions. As regarded the remoter districts and ports, where there were few Europeans, we must trust to the great officers of Government who had been consulted as to how such measures would be received by the great bulk of the native population. All such officers would have ample time to inform the Council of their views and opinions, though it was always particularly difficult in such localities to say how such a measure would be received till it came to be tried.

If, then, we were certain to obtain, within the time proposed, all the materials we were likely to receive for coming to a decision, why incur all the certain and inevitable evils of unnecessary delay? Even in England, where so much weight was given to every expression of public opinion, it was not usual to await such expression regarding details of such measures. When the principle was agreed on, it was always customary to carry the measures necessary to give effect to such principle, through all stages, with as little delay as possible. There was nothing magical or peculiarly constitutional in the period of three months usually assigned for the consideration of all projects. It was in ordinary cases a convenient period to fix, but the time proposed in the present case was ample for the fullest discussion of the Bills before the Council, and he (Sir Bartle Frere) trusted therefore that the Honorable Member for Bombay would not press for any further delay than the Right Honorable Mover of the Bill proposed to allow, before the Special Committee would be required to report.

MR. WILSON said, that he should perhaps mention, for the information of the Honorable Member for Bombay, that not only were copies of the Bills despatched to the local Governments in the middle of March, but unusual pains had also been taken to distribute to every Civilian in the country a paper containing the purport of the detailed measure, which, he believed, fully put them in possession of the policy which the Government intended to pursue. The Government had reason to believe that they should shortly have a report from Bombay, and they had reason to expect a report from Madras by the second steamer of this month. They had also been in possession of opinions from the remotest part of the North-Western Provinces; and the Lieutenant-Governor of the Punjaub had already communicated his observations on the Bill. He therefore hoped that his Honorable friend, the Member for Bombay, would feel satisfied that it was not the wish of the Government of India to unduly press forward the Bill.

The Motion to suspend the Standing Orders was put and carried.

MR. WILSON then moved that the Select Committee be instructed to present their Report within three weeks.

Agreed to.

EMIGRATION TO ST. KITTS.

SIR BARTLE FRERE moved the second reading of the Bill "relating to the Emigration of Native Laborers to the British Colony of St. Kitts."

The Motion was carried, and the Bill read a second time.

EMIGRATION TO ST. VINCENT.

THE VICE-PRESIDENT moved that the Bill "relating to the Emigration of Native Laborers to the British Colony of St. Vincent" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

ZILLAH COURT OF FURRUCKABAD.

MR. HARINGTON moved that the Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of

Furruckabad" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

KING OF OUDE.

MR. HARINGTON moved that the Bill "to provide for the execution of process within the premises occupied by His Majesty the King of Oude" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

TOLLS (CIRCULAR AND EASTERN CANALS.)

MR. SCONCE moved that the Bill "to amend and extend Act XXII of 1836 (relating to the levy of a toll on Boats, Rafts, and Floats passing through the Circular and Eastern Canals)" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

CONSERVANCY (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

THE VICE-PRESIDENT moved that the Bill "to amend Act XIV of 1856," be read a third time and passed.

The Motion was carried, and the Bill read a third time.

STAMP DUTIES.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to consolidate and amend the law relating to Stamp Duties," the Council resolved itself into a Committee for the further consideration of the Bill.

A verbal amendment was made in Section XII on the motion of Mr. Sconce.

Section XXXIV provided as follows :—

"If any person shall discover that any deed, instrument, or writing in his possession, which requires a stamp, is upon a counterfeit of a stamp of adequate value, and shall forthwith inform the Collector in charge of the Stamp Revenue of the District in which the counterfeit was issued, and shall prove to the satisfaction of such Collector that such counterfeit was purchased from a licensed vendor, he shall be entitled to be furnished gratis with a stamp of the value requisite, under Section II of the Act, for a copy of the deed, instrument or writing; but shall not be permitted to take such stamp away from the office of the Collector, until such copy has been made upon it."

MR. SCONCE moved the substitution of the words "counterfeit stamp" for the words "counterfeit of a stamp of adequate value."

Agreed to.

Subsequently, after some conversation, the Section was struck out altogether, as being likely to give rise to much collusion.

THE CHAIRMAN moved that a communication, which had just been received from the Government of the North-Western Provinces, on the subject of the Bill before the Committee, be read.

Agreed to.

A verbal amendment was made, on the motion of Mr. Sconce, in the exemption in Article 3 of Schedule A.

An amendment was made in Article 4 of the same Schedule on the motion of Mr. Sconce, the effect of which was to reduce the Stamp Duty from one anna to half an anna, on Bills of Exchange, Letters of Credit, &c., payable on demand, if the sum payable did not exceed fifty Rupees.

A similar amendment was made, on the motion of Mr. Sconce, in Article 45 of the same Schedule, relating to receipts or discharges given for the payment of money, &c.

Article 8 prescribed the following Scales for Bonds, &c. :—

						Rs.	As.	P.
"If for any sum not exceeding				50	Rs...	0	4	0
Above	50	Rs. & not exceedg.		100	,, ..	0	8	0
,,	100	,,	,,	200	,, ..	1	0	0
,,	200	,,	,,	300	,, ..	2	0	0
,,	300	,,	,,	500	,,	4	0	0
,,	500	,,	,,	1,000	,, ..	6	0	0
,,	1,000	,,	,,	2,000	,, ..	10	0	0
,,	2,000	,,	,,	3,000	,, ..	16	0	0
,,	3,000	,,	,,	5,000	,, ..	20	0	0
,,	5,000	,,	,,	10,000	,, ..	32	0	0
,,	10,000	,,	,,	20,000	,, ..	40	0	0
,,	20,000	,,	,,	50,000	,, ..	50	0	0
,,	50,000	,,	,,	1,00,000	,, ..	100	0	0
,,	1,00,000	,,	,,	1,50,000	,, ..	150	0	0
,,	1,50,000	,,	,,	2,00,000	,, ..	200	0	0
And for every further lakh of Rupees or part thereof ..						100	0	0 in addition."

THE CHAIRMAN said, it was understood, when this Bill was

last before the Council, that the scale for bonds, as above prescribed, and the Scale for Conveyances as laid down in Article 19, might be reconsidered. He had objected to the scale as it now stood, that it was hardly fair that the rates of Stamp Duty should decrease as the rates of value increased, and he found the same objection had now come up from the North-Western Provinces. He would read the following extract from the letter from the Secretary to the Government of those Provinces:—

"Mr. Muir states in para. 15 of his Minute, that he does not see why the rates of the stamp on receipts and bonds for debt should decrease as the scale of value is ascended. Why, in these cases, the per-centage on large transactions should not be equal to the per-centage on the smaller ones. The Lieutenant-Governor concurs in these remaks. In the opinion of His Honor it would not be unfair to adjust the scale by a fixed and equal per-centage on the sum represented by the transaction."

That was precisely the view which he took of the matter. He should move the substitution of the following Scale for that proposed by the Bill:—

			Rs.	As.	P.
"If for any sum not exceeding	50 Rs.	..	0	4	0
Above 50 Rs. & not exceeding	100 ,,	..	0	8	0
,, 100 ,, ,, ,,	200 ,,	..	1	0	0
,, 200 ,, ,, ,,	400 ,,	..	2	0	0
,, 400 ,, ,, ,,	600 ,,	..	3	0	0
,, 600 ,, ,, ,,	800 ,,	..	4	0	0
,, 800 ,, ,, ,,	1,000 ,,	..	5	0	0
And for every additional thousand Rupees or part thereof, up to ..	20,000 ,,	..	5	0	0 in addition.
And for every additional twenty thousand, or part thereof ..	..		100	0	0 in addition."

MR. WILSON said, he saw no objection to the amendment on the ground of principle. The difficulty which he felt in voting for its adoption was as to its probable effect upon the revenue. If the Honorable and learned Chairman had no objection, he (Mr. Wilson) would propose that the consideration of the Scale for Bonds as well as the Scale for Conveyances be deferred till next week, and he would, in the meanwhile, make the necessary enquiries on the subject.

THE CHAIRMAN acquiesced, and the consideration of the Scales prescribed by Articles 8 and 19 was accordingly postponed till Saturday next.

THE CHAIRMAN said, that Article 5 Schedule B contained the following exemption for the Presidencies of Madras and Bombay:—

"No petition or application to the Criminal or Revenue Authorities need be presented on stamp paper, except as prescribed in the Special Rule given at the close of this Schedule, with respect to cases that fall within Regulation VI. 1828 of the Bombay Code."

Now, Regulation VI. 1828 of the Bombay Code, was "a Regulation for extending in the same manner as in suits before the Courts of Civil Judicature, stamps to suits cognizable by Collectors under the operation of Chapter VIII. Regulation XVII of 1827, or any other now in force." So that, so far as the Presidencies of Madras and Bombay were concerned, they were to be exempted from all Stamp Duty in criminal proceedings. When we come to compare the amount of revenue produced by Bengal with that produced by Madras and Bombay, surely the portion of our territories which yielded the largest revenue was most entitled to exemption. He was of opinion that Criminal proceedings ought to be exempt from Stamp Duty every where: but if it was considered necessary that Bengal should be liable, he saw no sufficient reason for exempting Madras and Bombay.

MR. SCONCE said, he could only repeat that, if the exemption were to be extended to Bengal, the result would be a loss of revenue to the amount of about a lakh and a half of Rupees.

MR. HARINGTON said, he thought some distinction should be made between applications relating to criminal offences and applications presented to the Criminal Courts in cases which were really of a civil nature, such as claims for wages under Regulation VII. 1819 of the Bengal Code, and complaints of forcible dispossession under Act IV of 1840. With exception to such cases, he quite concurred in the expediency of abolishing stamps on petitions or applications to the subordinate

Criminal Courts. With regard to appeals he saw no reason why any exception should be made in favor of the Presidencies of Madras and Bombay.

MR. LEGEYT said, he was quite opposed to any proposition to tax judicial proceedings in Criminal cases, so far at least as concerned the Presidency of Bombay. This had never before been attempted there; and if it were done now, he was convinced that it would give rise to much dissatisfaction. Besides, the suggestion of the Honorable Member for the North-Western Provinces would require some definition or specification, which he (Mr. LeGeyt) thought was not a very easy matter, as to what cases should bear stamps and what not. As it was, this Bill already would, in some measure, enhance the Stamp Duties payable in the Presidency of Bombay, and he trusted that no steps would be taken to bring the criminal and common revenue cases within the scope of the Bill. It would be very hard indeed to require that every ryot who went with a complaint to the Collector should do so upon stamp paper, and he (Mr. LeGeyt) would remind the Council that in Bombay petitions from ryots were of much more frequent occurrence than in Bengal. He therefore hoped that the Council would pause before they passed or attempted to pass a measure of the kind, particularly as it was likely to create considerable annoyance and dissatisfaction.

SIR BARTLE FRERE would submit that the true principle was to exempt from stamp tax all complaints and proceedings whatsoever in criminal cases, and all petitions and other documents presented to Collectors, appealing against over-assessment, &c., leaving liable to Stamp Duty only those applications, whether made to a Magistrate or a Collector, which were in reality civil proceedings, and for the exemption of which no cause could be shown which would not apply to suits for damages in any other Court. He agreed with the Honorable and learned Chairman that it was monstrous to demand a stamp tax from a man who wanted to complain of a criminal offence having been committed, and he would therefore willingly exempt such petitions in Bengal, as they were at present exempted in Madras and Bombay. He also agreed with his Honorable friend (Mr. LeGeyt) that all petitions from ryots regarding their assessment should be free, as they had always been in the other Presidencies. This would leave subject to stamp tax only applications for recovering wages, for the possession of land rents, or the like, which were in fact civil suits.

MR. WILSON said, the proposition of the Honorable and learned Chairman involved two questions. The one was whether we should extend to Bengal the exemption proposed for Madras and Bombay; and the other, whether we should apply to Madras and Bombay the rule which obtained in Bengal. For his own part he was disposed rather to exempt Bengal than to apply a bad rule to Madras and Bombay. But, if he correctly understood the Honorable Member for Bengal, the extension of the exemption to Bengal would involve a loss of about a lakh and a half of Rupees. Then there was another consideration, namely, that the imposition of stamps in such cases would operate as a check against false complaints. As an illustration, he referred to the evil effects of a law passed in England, allowing gratuitous proceedings, of which several persons availed themselves as a cheaper and more methodical medium of recovering small debts than by the employment of a Collector.

SIR CHARLES JACKSON said, as he understood the amendment of the Honorable and learned Chairman, it merely proposed to exempt criminal proceedings from Stamp Duty in all the Presidencies. Surely there could be no objection to that. It would be hard indeed if a man could not complain of a robbery committed in his house without paying Stamp duty. Cases of dispossession under Act IV of 1840, and suits for wages, were not criminal proceedings, and they would still be liable to the Stamp Duties. The actual sacrifice of revenue, therefore, would be only a part of the sum

estimated by the Honorable Member for Bengal.

THE CHAIRMAN then moved the insertion of the words "not falling within any of the exemptions of this Schedule" after the words "Petitions or applications," in the first line of the Special Rule for Bengal; and a like amendment in the fourth line of the same rule.

The Motions were severally carried.

THE CHAIRMAN next moved the omission of the following Clauses in the exemptions for Bengal:—

"All charges and informations respecting crimes and offences not bailable under the Regulations.

"Petitions from prisoners, convicts, persons under examination, or otherwise in duress, or under restraint of the Court or its Officers."

Agreed to.

THE CHAIRMAN moved the insertion of the following before "Exemptions for the Presidencies of Madras and Bombay:"—

"GENERAL EXEMPTIONS.

"All petitions, applications, charges, and informations respecting crimes and offences.

"Petitions from prisoners, convicts, persons under examination, or otherwise in duress, or under restraint of the Court or its officers."

Agreed to.

SIR BARTLE FRERE moved the omission of the heading "Exemptions for Bengal," so as to convert the exemptions in question into general exemptions.

Agreed to.

THE CHAIRMAN moved the omission of the words "Criminal or" in the Exemptions for the Presidencies of Madras and Bombay.

Agreed to.

MR. SCONCE proposed the addition of the following Clause to the Special Rule for Bengal:—

"Statements of claims made to Collectors under Act X of 1859, shall be subject to the Stamp Duty prescribed in Section XXXVII of that Act."

MR. WILSON wished to know the grounds of the proposed amendment.

MR. HARINGTON said, before the enactment of Act X of 1859, the Revenue Authorities in the Presidency of Bengal were invested with a summary jurisdiction in certain classes of cases between landlord and tenant and landlord and agent; but although the awards made in such cases had all the force of a decree of Court, they were liable to be contested in a regular suit by either party who might be dissatisfied with the Collector's decision, in the Civil Court of the district having ordinary jurisdiction of the claim. The decision of this Court again was open to appeal to the Zillah Judge, and a further or special appeal lay to the Sudder Court, so that in every one of these cases there might have been no less than four different stages at considerable intervals of time before a final decision was come to, and it very frequently happened that the several stages which he had mentioned were actually gone through. One of the objects aimed at in Act X of 1859 was to get rid of this very protracted and necessarily expensive litigation, by reducing the number of the stages of a case. This was effected by constituting the Revenue Court the Court of first instance, and by making the decisions of that Court appealable directly to the Zillah Judge, instead of allowing them to be contested in the Court of the District Moonsiff, Sudder Ameen, or Principal Sudder Ameen, according to the amount or value of the claim or property in dispute. It appeared to the framer of the Act (Mr. Currie) and those who voted with him that, for many reasons, the Revenue Authorities were better qualified to deal, in the first instance, with the various classes of cases falling within the provisions of the Act than the lower Civil Courts, and the Act accordingly converted the summary jurisdiction of the Revenue Courts into a regular jurisdiction, though it at the same time prescribed rules of procedure for the guidance of the Revenue Officers, which differed little, if at all, from the procedure lately introduced into the Civil Courts. He (Mr. Harington) thought that in this respect Act X of

1859 must be regarded as a great improvement upon the law as it previously stood. The Act gave no new jurisdiction to the Revenue Authorities; it merely altered its character.

[Mr. Harington here read from the Code of Civil Procedure, prepared by Mr. Mills and himself, that part which described the Civil jurisdiction of the Revenue Authorities in the Presidency of Bengal in revenue matters.]

Section XXXVII Act X of 1859, he went on to say, in declaring that in suits for the recovery of arrears of rent or of money in the hands of an agent, the statement of claim should be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court, and that in all other suits the statement should be written on paper bearing a stamp of the value of 8 annas, introduced no new provision as regarded the valuation of suits connected with arrears or exactions of rent. Section VII Regulation VIII. 1831, in which the former law was contained, declared that—

"Summary claims of the nature above adverted to, which may be preferred to a Collector conformably to Section IV of this Regulation, shall be written on paper bearing a stamp of one-fourth the value which would have been required, had the claim been instituted in any Civil Court as a regular suit; provided, however, that the Collector shall have a discretion to receive a complaint, on paper bearing a stamp of 8 annas, from any independent taloukdar, farmer, or ryot, if the complainant is *bonâ fide* unable to pay the price of the prescribed stamp, or if the Collector should, for other reasons, consider the indulgence proper."

And here he might observe that while, under the concluding part of this Section, the Collector might, for any reason, whenever he thought proper, allow the claim in cases of the nature of those mentioned in the Section to be instituted on a stamp paper of only 8 annas value, Mr. Currie's Bill took away this discretion altogether, and insisted that in all such cases the statement of claim should be written on a stamp of one-fourth the value prescribed for regular suits. This modification of the previous law was therefore in favor of the Government. He believed he was right in saying that, under the existing Stamp Laws, in all other cases of which the Collectors of Revenue had cognizance, or in respect of which they were empowered to exercise summary jurisdiction, the application might be written on a stamp of only 8 annas value.

Section VIII of the same Regulation went on to say—

"With a view to give additional encouragement to parties having claims to arrears of rent to prefer regular suits on account of the same, it is hereby declared that the plaint in all such regular suits, if under the existing Regulations they would have been cognizable as summary suits, may be written on paper bearing a stamp of one-fourth the prescribed value, provided, however, that this rule shall not be considered applicable to a suit instituted with a view to set aside a previous summary decision, which suit shall be subject to the ordinary provisions for the payment of Stamp Duty."

This Section would show what were the views of the Legislature at the time Regulation VIII. 1831 was passed, and from the preceding Section, which he had read, it would be seen that Mr. Currie had really done nothing more than transplant the old law into the Bill introduced by him. It was quite possible that under Mr. Currie's Act there might have been some loss of revenue, but, if such had been the case, he believed it would be found that the loss had arisen simply from the abolition of one of the four stages through which suits of the nature of those under consideration might have passed under the old law before they were finally disposed of, and not from any much greater resort to the Revenue Courts than before the passing of Act X of 1859. He found that in one year in Bengal, while only 19,000 rent cases were instituted in the Civil Courts of which a large proportion were no doubt cases which were brought to contest the decisions of the Revenue Authorities, no less than 56,000 cases were instituted in the Revenue Courts, and this, notwithstanding the encouragement given to parties under the Section which he had quoted, to go at once to the Civil Courts, in which the institution fee in the like cases was the same as in the Revenue Courts.

He contended that the question as to whether Section XXXVII of Mr. Currie's Act should or should not be repealed, could not be properly gone into at this time. The Bill before the Committee was never intended to apply to cases falling within the provisions of Mr. Currie's Act, or in any way to affect that Act. He appealed to the Honorable Member for Bengal, by whom the present Bill was brought in, whether, when he introduced the Bill, he understood that it would rescind the Section of Mr. Currie's Act, to which he was referring. He (Mr. Harington) certainly never understood that such was intended. In confirmation of what he had just stated, he begged to call attention to the fact that the repealing Section of the Bill before the Committee, though it specified several Sections to be repealed, made no mention of Section XXXVII Act X of 1859. Surely this was conclusive on the point.

He would remind Honorable Members that the consent of the Right Honorable the Governor-General to Mr. Currie's Act was given in the unusual form of a minute, thus showing the great importance which his Lordship attached to the Act. In this minute the Governor-General expressed his belief that the Bill would confer a great practical benefit upon the agricultural population of Bengal, and His Lordship concluded the minute by bestowing marked praise upon Mr. Currie, the author of the measure. Of course it was open to any Honorable Member to bring in a Bill to repeal so much of Mr. Currie's Act as related to the valuation of claims falling within its provisions, and if such a Bill were introduced, he (Mr. Harington) should be quite prepared to discuss it upon its merits. But he thought they ought to act honestly in the matter, and not endeavor to get rid of the Section in question by a side blow, which it appeared to him they would be doing if they declared that Section to be repealed, or left it to be inferred that it was repealed by the present Bill, without republishing the Bill for general information, and hearing what the Lieutenant-Governors of Bengal and the North-West Provinces, the Members of the Boards of Revenue, and the public, or such portion of it as had any interest in the question, had to say against the repeal of the Section.

The CHAIRMAN said, the Section of Mr. Currie's Rent Act, to which the Honorable Member for the North-Western Provinces had alluded, ought now to be formally repealed by this Act. In point of fact the Section in question being part of an earlier enactment, would virtually be superseded by the proposed Bill. When Mr. Currie's Bill was passed, he (Sir Barnes Peacock) recorded his dissent from it. He would read the following extract from his dissent, which contained the grounds of his objection to that Bill, so far as it affected the Stamp Laws—

"Because Section XXXVIII of the Bil, (XXXVII of the Act) affects the Stamp laws and will, in my opinion, cause a considerable reduction in the revenue derived from the suits in question: whereas there is no reason for placing such suits in a more favorable position as regards Stamp Duty than other suits now cognizable only by the Civil Courts.

"Because, although the rate of Duty is decreased in respect of suits for a large amount, the Stamp Duties on many of the suits where the value is under 16 Rupees, is doubled by increasing the same from four annas to eight annas, which burden will in most cases fall upon the poorer classes of ryots who are the least able to bear it.

"Because, if the finances of the country were in a position to bear the loss, Stamp Duties on legal proceedings ought to be abolished; but the Government having lately declared that they could not afford to forego Stamp Duties in the Civil Courts, there is no reason why any of the suits provided for by this Bill should, where the value exceeds 16 Rupees, be specially favored by the reduction of the Stamp Duties thereon, at a probable loss of revenue of from a lakh to a lakh and a half, or two lakhs a year."

He saw no reason to change his opinion, and, as we were now consolidating the Stamp Laws, and endeavoring to improve the Stamp Revenue of India, he could not adopt the amendment proposed by the Honorable Member for Bengal, the effect of which would only be to make a distinction in favor of particular cases, and to occasion a considerable diminution of the

public revenue. He should therefore vote against the amendment.

MR. SCONCE said, this was a new question, and he did not think it was expedient to deal with it in this Bill at this late stage. He himself was in favor of some amendment in the Clause of the Rent Act now under discussion, but he thought that such amendment could only be effected by giving ample notice of the change to the parties interested.

SIR BARTLE FRERE said, he would remind Honorable Members that there were in Madras and Bombay a considerable number of suits for the recovery of rent which under this Act would have to pay Stamp duty. In framing a Bill to consolidate and amend the Stamp Laws, he saw no reason why there should be a difference in the rates of Stamp Duty in such cases between Bengal on the one side and Madras and Bombay on the other.

MR. HARINGTON said, that whatever alteration might be considered necessary should form the subject of a separate Bill.

SIR BARTLE FRERE said, he apprehended that it was one thing to leave the Bill as it stood, and quite a different thing to ask the Council to insert a Clause of the nature proposed by the Honorable Member for Bengal. He was quite willing to allow the Bill to stand as it was.

SIR CHARLES JACKSON said, as he understood, the object of this Bill was to consolidate the Stamp Laws throughout India, and it was advisable to have all the laws relating to Stamp Duties, now scattered over several volumes, gathered into one Bill. Now, it was proposed to insert a particular Clause, the effect of which would be to continue in favor of one class of suits in one Presidency, a distinction not allowed to the other Presidencies. The distinction, he believed, was first created from a feeling of tenderness for the ryot, for, as far as he could now remember, Mr. Currie put his proposition upon the ground that the ryots were poor. Now, he (Sir Charles Jackson) thought that the Council were competent to consider whether the distinction should be continued. Surely the Honorable and learned Chairman and the Honorable Member for the North-Western Provinces could discuss that question. The onus lay on those who asked for the exemption to show ground for it, and he (Sir Charles Jackson) did not see that the Honorable Member for the North-Western Provinces had shown any ground in support of the amendment. It might be true that the ryots were poor and ought to pay a light duty, but that was no reason why the Zemindar, when he brought his suit for the recovery of his rent, should pay less than other persons.

MR. HARINGTON said, his objection was that this Bill was never intended to affect Mr. Currie's Act. He could say for himself, and he believed for other Honorable Members also, that it was understood that the present Bill left Mr. Currie's Act entirely untouched.

MR WILSON said, if he understood this question, it appeared to him that Mr. Currie's Bill had a larger scope entirely independent of the matter of Stamp Duty. It could not be denied that the present was a Bill to consolidate the Stamp Laws, and undoubtedly, so far as Bengal was concerned, it did not appear to him to be irregular to consider everything connected with Stamp Duties. If the Honorable Member for the North-Western Provinces would say that the application of this Bill to Mr. Currie's Bill would alter the other provisions or the principle of it, that undoubtedly would be another matter.

THE CHAIRMAN said, in framing a Bill to consolidate and amend the Stamp Laws, the Council was quite competent, if they thought it necessary, to repeal that part of Mr. Currie's Bill which related to Stamp Duties. The first question therefore for the Council to consider now was whether there were sufficient grounds for making the exception. He (the Chairman) for one did not see that any such grounds did exist. The next question was whether the Clause in question should be repealed or not. It appeared to him that it ought to be

repealed, because, if it were not repealed, the present Bill would not be a complete consolidation of the Stamp Laws.

Mr. FORBES said, the question before the Council was not merely one of a consolidation of the Stamp Laws, and it was a matter for consideration whether the amendment proposed by the Honorable and learned Chairman, if adopted, would not operate to the injury of the ryots. When Mr. Currie's Bill was passed, he (Mr. Forbes) remembered that the present Lieutenant-Governor of Bengal, in reply to the dissent recorded by the Honorable and learned Vice-President, recorded his assent to it, and declared his conviction that the Bill would prove an inestimable benefit to the agricultural community. If facilities were not given to the zemindars to obtain their rents, the Government would find it difficult to collect its revenue; and as the Lieutenant-Governor of Bengal was responsible for the due realization of the revenue, he (Mr. Forbes) considered that he had not only a claim but a right to be heard on any question that he might consider would put its punctual realization in doubt. Mr. Forbes referred to the feelings of surprise and dissatisfaction which the withdrawal, in so sudden a manner as had been proposed, of the boon conferred on the ryots by Mr. Currie's Act, would give rise to, and noticed the fact that the Council had already received more than one petition upon the Stamp Bill from the British Indian Association, composed, he believed, mainly of Bengal Zemindars, without any reference being made in that petition to the repeal of that part of the Rent Bill to which the Honorable and learned Vice-President's motion referred. It was not, he thought, to be supposed that the Association, would have omitted to notice a fact of such interest and importance to them, if they had had any suspicions that it was intended, by the original Bill, to effect the change now sought to be introduced. Mr. Forbes concluded by observing that there was not a Zemindar or a ryot throughout the two Divisions of the Bengal Presidency who was not interested in this question, and he thought there never was a case in which their opinion on a measure was more entitled to be heard and considered than the present.

After some further discussion, the republication of the Bill was agreed to, whereupon Mr. Sconce withdrew his amendment, and Sir Barnes Peacock declared his intention of giving due notice of the amendments which he proposed to move next Saturday, relative to the matter under discussion.

Mr. HARINGTON said, when this Bill was last before the Committee, he moved the addition of a Clause to the note on Article 6 Schedule B, the object of which was to provide that, if in appeal a suit should be remanded for a second decision by the Court below, or if a plaint, which had been rejected by the Court of first instance, should be ordered to be received and tried, the appellant should be entitled to receive back the full amount of the Stamp Duty paid by him on his petition of appeal. He stated briefly at the time the grounds upon which he advocated the introduction of this provision into the Bill, but he did not succeed in carrying the motion, which was rejected by a majority of one. In asking for a reconsideration of this decision, he felt that he owed an apology to the Council for thus trespassing further on their time, but if he could satisfy the Council, as he hoped to be able to do, that sufficient reasons existed for introducing into the Bill the additional Clause moved by him, he was sure that Honorable Members would not begrudge the few minutes which would be occupied in the discussion of the question.

The Council were aware that the Royal Commissioners, to whom was entrusted the duty of drawing up the new Code of Civil Procedure for all India, commenced the chapter of Preliminary Rules by declaring that—

"No Stamp duty, fee, or deposit, shall be required on the institution of any civil suit, or on the entry of any appeal from the decision or order of any Civil Court;—nor shall Duties or fees of any kind be payable in respect of any other proceedings had in any Civil Court, except such fees or charges as may be set forth in tables to be prepared as hereinafter provided."

In their Note on this part of the Chapter the Commissioners observed—

"No institution fee has ever been paid in the Supreme Court, nor, under the original system of Lord Cornwallis, was there any such fee in the Courts of the Company. The State defrayed the expense of all the judicial establishments. An institution fee, in the case of civil suits, was established by Regulation XXXVIII of 1795, not as a source of revenue, but, as appears from the Preamble to the Regulation, for the purpose of preventing vexations litigation. By Regulation VI of 1797 the institution fees were converted into Stamp Duties; the Preamble there assigns the same object, but adds also that of increasing the public revenue. The last purpose is the only one mentioned in Regulation I of 1814, which further regulates these payments. Having to provide an uniform system of procedure for India, we have thought it better, on the whole, to abolish the institution fee, rather than to recommend its extension to Calcutta."

He was sure that every Honorable Member now present would have rejoiced had it been possible to adopt the proposition of Her Majesty's Commissioners for the entire abolition of judicial stamps, whether as a source of revenue, or as a means of checking vexatious litigation, leaving groundless or litigious suits, when instituted, to be punished by fine; but the Honorable and learned Vice-President, by whom the Bill containing the new Code of Civil Procedure was introduced, informed the Council that, after mature deliberation, the Government of India had come to the conclusion that financial considerations rendered it possible to sacrifice the large amount of revenue derived from the sale of judicial stamps. He need not tell the Council that the same reasons still existed for continuing the Stamp Laws, but although the retention of those laws might be necessary, he felt certain that there could be no desire on the part of the Council to render their operation more burthensome or stringent than was required to protect the interests of Government. In the remarks with which he introduced the original motion, he stated that the present practice was, whenever a suit was remanded in appeal, to refund to the appellant the full amount of Stamp Duty paid upon the petition of appeal. Section VIII Regulation XIX. 1817 of the Bengal Code enacted that—

"In the special appeals provided for by the foregoing Section, as well as in all other appeals, regular or special, under the Regulations in force, if the suit in appeal be referred back for further investigation and decision without a judgment upon the merits of the case, the Stamp Duty paid by the appellant on his petition of appeal shall be returned to him, and if the appellant or respondent have appointed a pleader, his fee shall be limited to such sum as may be deemed an adequate compensation for his labor, not exceeding one-fourth of the established fee in a regular suit."

And by Clause 2 Section XXV Regulation XIII. 1816 of the Madras Code, it was provided that—

"In all other cases the Court of Sudder Adawlut are authorized to direct a return of the whole or a portion of the amount of Stamp Duty substituted for the institution fee as, on due consideration of the circumstances of the case, whether brought before them in appeal or referred to them by a Provincial or Zillah Court, may appear to them just and proper."

Both these laws were still in force, and neither of them would be affected by any thing contained in the Bill before the Committee, so that whether his motion succeeded or not, the people in the Presidencies of Bengal and Madras would continue to enjoy the benefits of the existing law as just explained. There would, however, he thought, be an advantage in making the present Bill as complete as possible, and in having one uniform law for the three Presidencies. In the Bombay Code he could not find any enactment corresponding to those of the Bengal and Madras Codes; but there seemed no reason why Bombay should be placed upon a different footing in this respect from the other two Presidencies. It was proper that he should mention to the Council that the Bengal and Madras laws, which he had quoted, were amongst the Regulations of the three Presidencies which it was proposed to repeal, but although the Bill for repealing those Regulations was brought in by him (Mr. Harington,) he certainly never intended to alter the existing law as regarded the point under consideration. It might be supposed by the Honorable Members who compos d the

majority against the motion, when it was formerly made, that the practice of refunding Stamp Duty in remanded suits might lead to abuse, and might often encourage parties unnecessarily to appeal. But there was no reason to believe that such had hitherto been the case. He held a return in his hands, from which it appeared that the appeals from orders of nonsuit preferred to the Sudder Court in Calcutta, during the years 1857, 1858, and 1859 amounted to only 82, which was little more than 27 per annum, and that of the appeals of this description tried during the same period, 38 terminated in the reversal of the order of the Court below, or in the remand of the suit to be heard and determined on the merits, to 34 in which the appeal was disallowed. In these latter cases the Stamp Duty was not of course refunded, and its amount might be regarded as an adequate penalty for the appeal having been made without sufficient grounds. The loss of public revenue under the operation of his motion, should it be adopted, would be very trifling, while the refusal of the Council to allow any refund under the circumstances stated in the motion would undoubtedly operate with very great hardship in individual cases. It must be remembered that the law provided only for the payment of a single institution fee on each plaint or petition of appeal, and that it contemplated that, on every such petition of plaint or appeal, there should always be a judgment on the merits, not, in cases of appeal, an order of remand, to which alone the motion would apply. He trusted that he had said enough to satisfy the Council of the fairness and justice of his proposition, and again apologizing for having occupied so much of the time of the Council, he had now the honor to move the addition of the following note to Article 6, Schedule B, *viz* :—

"If an appeal or plaint, which shall have been rejected by the lower Court on any of the grounds mentioned in Act VIII of 1859, shall be ordered to be received, or if a suit shall be remanded in appeal for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of Stamp Duty paid on the petition of appeal."

The CHAIRMAN said, he did not think that the Honorable Member for the North-Western Provinces had shown any new grounds for asking the Council to reverse the decision to which they had come with respect to this Clause. He should therefore vote against the motion.

Mr. WILSON said, he did not quite understand the principle upon which the Honorable Member for the North-Western Provinces grounded his motion. Though a plaint might be rejected by the lower Court through an error of judgment on the part of the Judge, yet by providing as had been done by the existing law that the Appellate Court might on appeal order it to be received and tried by the lower Court, we had provided the best means for allowing justice to be done. The Honorable Member for the North-Western Provinces had not shown that the non-adoption of his amendment would lead to a denial of justice.

Mr. HARINGTON said, if the Council determined that no refund should be allowed in cases remanded for a hearing or a rehearing, the expenses of a suit would often be increased to such an extent that the parties would be unable to bear them, and in this way, no doubt, the rejection of his motion would lead to a denial of justice. He could point out cases which had been remanded three and even four times in appeal The institution fees paid on the petitions of appeal in these cases must have amounted to a considerable sum. The refund could not perhaps be defended on the ground of principle It must be regarded in the light of an indulgence on the part of Government. As he had already said, the loss to the revenue from the small number of remands must be very trifling; though, were the indulgence withheld, the result would be much individual suffering.

Mr. SCONCE said, he thought it important to notice the strict limitation which the law imposed on the class of appeals which would benefit from

the proposition of the Honorable Member for the North-Western Provinces. He referred to Sections 351 and 352 of Act VIII of 1859, which determined the condition upon which alone a suit could be remanded. Only in cases in which the Lower Court, without going into any discussion of the merits of the issues raised, disposed of the suit upon some preliminary point, could any suit in appeal be remanded. Now the earlier Sections of the same Act showed the various preliminary grounds which might be asserted for non-suiting a plaintiff. For example, Section 29 provided that a plaint might be rejected, if, in point of form, it contained too many or too few words; and surely not only was it important that the orders of the Lower Court should be reviewed in appeal, but that if, on so technical a question, the order of the first Court were erroneous, the plaintiff, appellant, should not have unnecessarily to be charged with the value of the appeal stamp. Again, a plaint might be rejected under Section 31, if the claim was supposed to be improperly valued, and under Section 32, if it appeared to the Lower Court that the subject matter of the plaint did not constitute a cause of action. Let it be observed, then, that the orders of the first Court, as it were, shut the doors of the Court on the face of a suitor; the discussion had not been entered on: and if, on appeal, the ground taken by the first Court was held not to be a valid ground, it was surely desirable to continue the principle of the present law, and not put suitors to so heavy an additional charge. In fact, if in such cases the value of the appeal stamps were not refunded, it would be equivalent to exacting a double institution fee, before the case could be entered upon. The orders of the Appellate Court went simply to find for a plaintiff an entrance into the Lower Court: and it seemed to him (Mr. Sconce) that there was a manifest distinction between such a case and one in which the old issue had been investigated in the first Court, and would be again investigated in the second.

MR. LEGEYT said, the Honorable Member for the North-Western Provinces had expressed his belief that, if the Council refused to adopt his amendment, great hardship to suitors would be the consequence. He (Mr. LeGeyt) must say that that had been the case in Bombay, where no refunds were allowed. He thought that it would be a great improvement upon the existing law to allow the superior Judicial Authorities to order a refund of Stamp Duty on the petition of appeal in the case of the rejection of an appeal or plaint by any fault of the Lower Court. He should therefore support the amendment.

SIR BARTLE FRERE said that, as he now understood the case, which he thought had not been very fully explained when it was last discussed, the right of refund was claimed on the ground that the parties had been put to an additional expense for stamps, not by any default of their own, or from any cause connected with the merits of the case, but simply owing to error or oversight on the part of the Court which tried the case, and that it was not fair to charge the parties with such expenses when nothing was done to advance their case or bring it nearer to a final decision. He thought this feature made a very essential difference in principle between the exaction of Stamp Duties in the class of cases referred to, and the same tax in all other stages of the proceedings. There was an intelligible reason when Government said to the suitor—"We must tax you for purposes of revenue at every stage of litigation, in the original suit, and in every stage of appeal, till the question of your rights is finally decided." But the same reasons would not apply, when nothing whatever was done for the suitor in return for the stamp tax levied, when, for no fault of his own, he was thrown back to precisely the same point where he was before, and when he might be taxed over and over again without being nearer a final decision as to his rights. The Honorable Member for the North-Western Provinces had, he thought, shown that the cases in which the refund could be claimed were not numerous, but that, in those cases, it would be a great

injustice to refuse the refund, and he (Sir Bartle Frere) should therefore vote for the proposed amendment.

MR. WILSON said, supposing that a suit had miscarried from a supposed fault of the lower Court, if you allowed the suitor to claim a refund of Stamp Duty on his petition of appeal, would he not be as much entitled to say to the Court—"you have been the cause of my preferring an appeal, and you should pay the expense of my appeal." This, it appeared to him, (Mr. Wilson), involved a very dangerous principle, and if you allowed it in one case, there was no seeing where you could stop. The plaintiff having appealed, he had clearly the advantage of a right of appeal; and if his appeal were admitted, he farther had the advantage of his appeal. Therefore, on both grounds, he had a *quid pro quo*. But the amendment proposed by the Honorable Member for the North Western Provinces involved the principle of holding Judges responsible for their acts.

THE CHAIRMAN said, if we were to hold that the Government ought to refund the Stamp Duty on a petition of appeal in a case where the lower Court had rejected the plaint, and the Appellate Court, on appeal, had ordered it to be received and tried, why should not the suitor be equally entitled to a refund if the Appellate Court, on appeal, reversed the decision of the lower Court? It appeared to him (the Chairman) that there was no difference, in this respect, between a wrong rejection of a plaint and a wrong decision. Nor did he see any reason why a refund should be allowed in the case of a remand.

MR. HARINGTON said, he did not think that the two cases were analogous. In the one there was a formal trial in the presence of the parties, first, in the Court of original jurisdiction and, afterwards, in the appellate Court. In the other case, it could scarcely be said there was any trial at all, at least in those cases in which the order of rejection was passed merely on a perusal of the petition of plaint before the defendant had even been summoned. It would be very hard in such a case to make the defendant pay for the stamp on the petition of appeal which according to the practice of the Courts in the Mofussil would be charged to him in the event of the plaintiff ultimately succeeding in his suit. The defendant might justly plead that he had not demurred to the hearing of the suit in the form in which it was brought. Under the existing law, appeals from orders of non-suit might be preferred on the stamp paper prescribed for petitions in the Court in which they were presented; but the proposed law did away with this indulgence and required that a stamp of the full value should be used. This was another reason for a refund of the Stamp duty in cases of remand.

After some further discussion, the Council divided:—

Ayes 5.	*Noes* 3.
Mr. Sconce.	Sir Charles Jackson.
Mr. Forbes.	Mr. Wilson.
Mr. Harington.	The Chairman.
Mr. LeGeyt.	
Sir Bartle Frere.	

So the Motion was carried.

Article 7 contained the following Special Rule for the Presidency of Bombay:—

"Suits cognizable before Collectors under the operation of Chapter 8 Regulation XVII 1827, as modified by Act XVI of 1838, shall be subject to the same rules in regard to stamps as are in force as above for the Courts of Civil Judicature."

MR. LEGEYT moved the addition of the following proviso to the above rule:—

"Provided that petitions under Act XVI of 1838 shall be on stamps one-fifth of the value of those used in civil suits, but that no lower stamp than one Rupee shall in any case be allowed."

He said, the reasons for this amendment were stated as follows, in paragraph 32 of the Bombay Government's letter, dated 6th December last:—

"These suits being of a summary character, and merely for the temporary possession of land on which the decision of a regular Civil Court may be obtained afterwards, a heavy

tax would be inappropriate, but it is quite necessary to check useless litigation in some way; and one-fifth may be taken as a very moderate tax, but no lower stamp than one Rupee should in any case be allowed."

THE CHAIRMAN said, he saw no reason why there should be a different rule for Bombay, when we were now consolidating the Stamp Laws throughout India. It appeared to him that, if a rule was proper for Bombay, it was equally proper for the other Presidencies.

MR. WILSON said, to-day we had been making very great sacrifices of the public revenue for the sake of ensuring uniformity, and he therefore hoped that the Honorable Member would not press his amendment. As remarked by the Honorable and learned Chairman, if the proposed rule was good for Bombay, it was good for the whole of India.

MR. LEGEYT having pressed his Motion, the Council divided :—

Aye 1.	*Noes* 7.
Mr. LeGeyt.	Mr. Sconce.
	Sir Charles Jackson.
	Mr. Forbes.
	Mr. Harington.
	Mr. Wilson.
	Sir Bartle Frere.
	The Chairman.

So the Motion was negatived, and the Council resumed its sitting.

ABSENCE OF THE GOVERNOR GENERAL.

SIR BARTLE FRERE moved that the Council resolve itself into a Committee on the Bill "to continue in force for a further period of three months Act XXI of 1859, for providing for the exercise of certain powers by the Governor General during his absence from his Council."

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

ESCAPED OFFENDERS.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to amend Act V of 1858 (for the punishment of certain offenders who have escaped from Jail, and of persons who shall knowingly harbour such offenders);" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to VI were passed as they stood.

Section VII provided as follows :—

"Whoever shall knowingly harbour or conceal, or assist in harbouring or concealing, any such convict or other person who shall have escaped as aforesaid, and shall not have surrendered within the period provided in Section II of this Act, shall be liable to imprisonment, with or without hard labor, for any term not exceeding seven years, and shall also be liable to fine."

MR. SCONCE said, he did not think that this Section should be passed, at least not without considerable modification. Under the Section, as it now stood, a person might be punished for harbouring a convict who had escaped from jail in 1857. Three years had passed since the escape of the convict, and yet the person, who harboured him, was liable to be imprisoned for seven years. Then, again, we might conceive the case of a convict who had escaped from a jail in one place and was concealed in another place 500 miles distant. If it was necessary to punish men for harbouring convicts, it was the duty of Government to proclaim the convicts who escaped from jail. He would therefore propose the introduction of an amended Section to the above effect, or rather he would omit the Section altogether. The subsequent Section sufficiently secured the liability of the responsible parties, such as landholders and others, to give early information of the resort of escaped offenders to their estates. He should first move the omission of the Section altogether.

MR. HARINGTON said, the effect of the present Bill would be greatly to mitigate the existing law, and he thought that the Council at large would concur in the expediency of the pro-

posed mitigations. The Section, to which the Honorable Member for Bengal objected, was one of the Sections which had been taken *verbatim* from the present law, and if the motion of the Honorable Member for Bengal for the omission of the Section were adopted, knowingly harbouring escaped convicts would not be a criminal offence punishable under the Bill. He (Mr. Harington) did not think that persons who knowingly harboured escaped offenders should go unpunished. It appeared to him that it signified nothing whether the prisoner escaped three, or ten, or even thirty years ago, so long as the person who harboured him knew that he was an escaped convict. The whole case turned upon the guilty knowledge. Although the Section fixed seven years as the term of imprisonment which might be awarded, it did not follow that the whole term would be adjudged in every case. It was merely a maximum period. If the Council considered the maximum too high, it could be reduced. But he could not consent to the entire Section being struck out of the Bill, and he should therefore vote against the Motion.

THE CHAIRMAN said, the following were the crimes enumerated in Section VI, namely, "Rebellion, mutiny, desertion, murder, attempts to murder, thuggee, dacoity, robbery, belonging or having belonged to a gang of thugs or to a gang of dacoits, or to a wandering gang associated for the purposes of theft or robbery;" and Section VII provided for the punishment of any one harbouring an offender who had been convicted of any of the above offences, and who might escape from jail. Then the question was whether seven years' imprisonment was too severe a punishment for such an offence. He (the Chairman) did not think it was for any person who was an accessory after the fact to such offences as rebellion and the like.

The Motion was put and negatived.

MR. SCONCE then moved the substitution for the same Section of an amended Section, providing for the punishment of persons harbouring escaped offenders after the proclamation of their escape by Government.

After some discussion the Motion was withdrawn; and the Section was passed, after a verbal amendment, on the Motion of Mr. Harington.

Section VIII was passed after a similar amendment on the motion of Mr Sconce.

The remainder of the Bill was passed as it stood; and the Council having resumed its sitting, the Bill was reported.

PORT-DUES.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues);" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

ESCAPED OFFENDERS.

MR. HARINGTON moved that the Standing Orders be suspended, to enable him to proceed with the Bill "to repeal Act V of 1858 (for the punishment of certain offenders who have escaped from jail, and of persons who shall knowingly harbour such offenders), and to make certain provisions in lieu thereof." In doing so, he said, it was very desirable that the Bill should be passed into law with as little delay as possible, as there were several cases awaiting trial which the local authorities would not proceed with until it was known what form the law would take.

MR. FORBES seconded the Motion, which was put and carried

MR. HARINGTON then moved that the Bill be read a third time and passed.

The Motion was carried and the Bill read a third time.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill to the President in Council, in order that it might be transmitted

to the Governor-General for his assent.

Agreed to.

ABSENCE OF THE GOVERNOR-GENERAL.

SIR BARTLE FRERE moved that the Standing Orders be suspended, to enable him to proceed with the Bill "to continue in force for a further period of three months Act XXI of 1859, for providing for the exercise of certain powers by the Governor-General, during his absence from his Council."

MR. WILSON seconded the Motion, which was put and carried.

SIR BARTLE FRERE then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

SIR BARTLE FRERE moved that Mr. Wilson be requested to take the Bill to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

EMIGRATION TO ST. KITTS.

SIR BARTLE FRERE moved that the Bill "relating to the Emigration of Native Laborers to the British Colony of St. Kitts" be referred to a Select Committee, consisting of Mr. Harington, Mr. Forbes, and the Mover.

Agreed to.

INDEMNITY.

MR. HARINGTON gave notice that he would, on Saturday, the 21st Instant, move the first reading of a Bill "to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances."

REGISTRATION OF ASSURANCES.

MR. FORBES moved that two communications received by him be laid upon the table and referred to the Select Committee on the Bill "to provide for the Registration of Assurances."

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT.)

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

ZILLAH COURT OF FURRUCKABAD; AND KING OF OUDE.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of Furruckabad" and the Bill "to provide for the execution of processes within the premises occupied by His Majesty the King of Oude" to the President in Council, in order that they might be transmitted to the Governor-General for his assent.

Agreed to.

EMIGRATION TO ST. VINCENT; AND CONSERVANCY.

THE VICE-PRESIDENT moved that Sir Bartle Frere be requested to take the Bill relating to the Emigration of Native Laborers to the British Colony of St. Vincent," and the Bill "to amend Act XIV of 1856" to the President in Council, in order that they might be transmitted to the Governor-General for his assent.

Agreed to.

TOLLS (CIRCULAR AND EASTERN CANALS.)

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on Boats, Rafts, and Floats passing through the Circular and Eastern Canals)" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, April 21st, 1860.

PRESENT:

The Hon'ble Sir Bartle Frere, *Senior Member of the Council of the Governor-General,* in the chair.

Right Hon'ble James Wilson,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	Hon'ble Sir C. R. M. Jackson,
H. B. Harington, Esq.,	A. Sconce, Esq.,

The following Message from the President in Council was read:—

Message No. 208.

"With reference to the Message from the Legislative Council No. 132, dated the 31st December 1859, the President in Council has the honor to transmit to the Legislative Council the accompanying copy of a Despatch in the Legislative Department, from the Secretary of State, No. 4 of 1860, dated the 15th March, together with the draft Act therewith received, for setting apart certain property for the support of the Baronetcy conferred on Sir Jamsetjee Jejeebhoy.

By order of the Hon'ble the President in Council.

W. GREY,

Secy. Government of India."

Fort William,
19th April 1860.

The Despatch from the Secretary of State above referred to was read by the Clerk as follows:—

INDIA OFFICE,

London, 15th March 1860.

MY LORD,—I herewith transmit to you the draft Act for setting apart certain property for the support of the Baronetcy conferred on Sir Jamsetjee Jejeebhoy (forwarded with your letter of the 5th January, No 1, 1860), which has received the sanction of the Crown, signified under the Royal sign manual of Her Majesty, countersigned by the Secretary of State for India.

I have, &c., &c.,

C. WOOD.

To His Excellency the Right Hon'ble the Governor General, &c.

INCOME TAX; AND LICENSING OF ARTS, TRADES, AND PROFESSIONS.

THE CLERK presented to the Council a Petition from the British Indian Association regarding the Bill "for imposing duties on profits arising from property, profession, trades, and offices;" and the Bill "for the Licensing of arts, trades, and profession."

MR. WILSON moved that the Petition be referred to the Select Committee on the Bills.

Agreed to.

STAMP DUTIES.

THE CLERK presented a Petition from the same Association regarding the Bill to "consolidate and amend the law relating to Stamp duties."

INDIAN FINANCES.

MR. HARINGTON said, previously to the Council proceeding to the regular business of the day, as sketched forth in the paper which the Honorable President held in his hands, there were two questions which, in reference to what had fallen on different occasions from the Right Honorable Gentleman opposite, on the subject of the present and probable deficit for some time to come in the income of this country as compared with its expenditure, he wished to ask the Right Honorable Gentleman, before the Select Committee on the Income Tax Bill met; and it would perhaps be more convenient for him to put those questions now than at a later hour of the day. The questions were as follows:—

1st.—How far the expected deficiency of the next year of 6½ millions it was contemplated would be met by reduction of expenditure?

2nd.—Seeing that it was proposed to take the Income Tax Bill for the limited period of five years, how it was contemplated, in the interim, to provide ways and means which would enable the Government to dispense with the Tax at the expiration of that period?

MR. WILSON rose and said—

MR. PRESIDENT,—Sir, in replying to the two questions just put to me by

my Honorable friend opposite, it will be necessary, in order to make my reply fully intelligible in respect to the prospective reduction of the Expenditure, that I should trouble the Council with a few remarks as to how far we have recently succeeded in diminishing our establishments, and what we are at this moment doing with that view; and as I had due intimation that these questions would be asked, I am prepared to do so with as much precision as our accounts will permit. I need not remind the Council, that in the last year, that is, the year 1858-59, the deficit in our Indian Exchequer amounted in all to £13,393,137, and that in the current year just about to close, it amounts, as near as can be ascertained, to £9,290,129—that, it will be observed, is a reduction of the deficit in the present year of £4,103,000. When I had the honor, on the 18th of February, to explain the views of the Government, I showed that, by further ameliorations in our financial condition, we had every reason to hope that, in the coming year, taking every thing as it then stood, and of course making no calculations for any new source of income which I was about to propose, the deficit would be reduced to £6,500,000; and I stated to the Council the changes in the estimates of the preceding year by which this reduction was effected. I now hold in my hand a detailed statement of the estimated Income and Expenditure as it was furnished to me. Speaking as I then was, and as I now am, before even the commencement of the year to which this estimate refers, I cannot of course vouch for the precise accuracy of every figure. That would be simply impossible. But experience has latterly abundantly shown that, to whatever extent the results vary from our estimates, it is always that the latter are in excess of the former. But as to the accuracy of these estimates, I can only say that they are made after the most rigid examination by the Financial Secretary and the Accountant General. I have since had that statement again examined, and the result is unchanged. It may indeed be that, in the rigid scrutiny to which we are for the first time subjecting estimates of the coming year, some modifications may be made in the same way as the original estimate assumed by the Chancellor of the Exchequer in England (when he produces his Budget) may be subjected to some modifications in passing the votes through Committee of Supply. But so far as an estimate of a coming year is concerned, I can only say that I have never seen in England—and I had myself the duty for five years of carrying the estimates through Parliament—so much pains taken to arrive at an accurate result. Well, Sir, by these accounts, it appears that the Income of 1859-60, that is, the years about to expire, is £37,706,209. The Income of next year is estimated at £38,116,208, showing an increase of £410,000. This is attributable mainly to the additional duty upon Salt imposed by this Council last year. Then, again, the expenditure of the present year is £41,770,018, and that of the coming year is estimated at £40,230,000, showing a decrease of £1,540,000. This is made up by a further decrease in Military Charges, over and above the very large reduction which we have made during the last six months, of £1,740,000; but against which is to be placed an increase of interest for the loan of this year to the extent of £200,000, making a net reduction of £1,540,000. If then we deduct our Income of £38,116,208 from our reduced Expenditure of £40,230,018, we shall find a deficit in India of £2,113,810. To this we have two other sums to add—first, the charges in England, which will now assume larger dimensions in consequence of our great increase of English Debt, from £3,894,400 to £26,649,000, since 1857. Independent of the Stores included in our Indian Accounts, these charges are computed at £4,393,000. And here I must say, if there is a point in respect to these estimates about which I am doubtful, it is this. I doubt very much that we have understated this sum, and that in consequence our deficit may turn out larger than we really expected. Then there is the annually increasing sum required for the payment of interest on the guaranteed Railway Capital, a sum which, for the next four or five years, must be expected to show an annual increase.

The lowest amount at which it can be placed in the coming year, after deducting the net receipt of the Railways, was £1,000,000. Our deficit is then composed as follows :—

Deficit in India	..	£2,113,810
Home Charges	..	4,393,020
Railway Interest	..	1,000,000
	Total	£7,506,830

Our total apparent deficit thus is £7,506,000. But then it must be explained that that sum includes £1,000,000 for compensation for losses in the mutiny, which, as I explained on the 18th February, we deducted from our deficit as being a sum which would not recur; and thus our deficit between regular Income and regular Expenditure was reduced to £6,500,000. There are two other items of large expenditure in the present year, and perhaps some similar demand may be made in the coming year. I allude to the redemption of the Tanjore Bonds and the payment of the debts of the Nawab of the Carnatic. Now both those charges are of the character of the payment of debt, which once made will not again recur. They are not therefore included in the deficit of Income and Expenditure of the present year, nor in the estimate of the coming year. As on the one hand we do not place Loans in the category of Income, so neither do we place the repayment of Debt in the category of Expenditure. Both are transactions affecting only the finances of the single year in which they take place, and are exhibited in the Cash Balance Account, but not in the Accounts of Income and Expenditure. This is exactly the course pursued in England.

I repeat, therefore, that the deficits of the present year, and of the next year, are in no respect affected by any of these payments.

Then, Sir, the first question of my Honorable friend relates to the disposal of the deficit of the next year, and what proportion of it we hope to meet by the reduction of Expenditure. I must here beg to remind the Council of what I said on the 18th of February on this subject. I then said, "Now we fully admit that in our endeavours to restore the equilibrium between Income and Expenditure, our first duty is to use every effort to reduce Expenditure to the lowest point consistent with security and good Government, and I hope, before I sit down, to show that the Government is not unmindful of its duty in this respect. But I submit there is a point below which the interests of the country, in preserving that peace and security which are so essential in order to maintain that prosperity which the country now enjoys, forbid us to carry reductions"; and again I said, "We will do our best to reduce expenditure, and to improve administration: but when that is done, it will not be enough." The first question of my Honorable friend, as I have said, is how far we are enabled to give practical effect to these professions in the coming year. It must be obvious to the Council that that question must not be looked at without reference to what we have done during the last six months, and are still doing in this way. Now I think I may dismiss in a few words the subject of our Civil Expenditure. I have not yet seen any statement from any quarter whatever which professes that our Civil Expenditure can on the whole be reduced. Improved it may be, reduced I do not believe it can be. And this will be more apparent, when I refer to the fact, that although our Income has greatly increased during the last four years, yet that our Civil Expenditure has increased also by more than £500,000 in excess of our increased Income, even including the increased Customs Duties of last year. The additional cost of administering new territories, and the addition of £2,000,000 to the interest of the debt, go far to explain this fact.

Then, again, we must bear in mind in regard to our Civil Expenditure, that during the last two years every thing has been rejected or postponed that possibly could be; that public works have been to a great extent suspended; and that the sums devoted to education have been strictly limited. I may, therefore, dismiss from consideration the prospect of effecting any material reduction in this department of our Finance. No, Sir, the great field for reduction is our

Military Expenditure. Well, let me show you what we recently have done, are doing, and have engaged to do in this respect. Let me ask you to consider what has been the course which this Expenditure has taken. Taking our Military Charges proper, including the Civil Corps, the following has been the expenditure in India in each of the last three years and in the current year:—

MILITARY CHARGES.

1856-57	£11,303,780
1857-58	15,089,391
1858-59	20,258,065
1859-60	16,855,275

Now, then, looking at these figures, we find that, in the present year, I may say almost in the last six months, we have already reduced our Military Expenditure by £3,402,790. But this is altogether independent of the further reductions of £1,740,000, which I named on the 18th of February as being already provided for in the coming year. If we add this sum, then we have a reduction in the two years amounting to no less than £5,142,790, and let me say that, although this large reduction appears divided between the accounts of two years, yet that it will really have been effected in about one year—the latter half of the current year and the first half of the coming year. And yet, Sir, we are charged with effecting no reductions of expenditure! What reply will our assailants make to this fact? Well, but to what amount will that reduce the cost of the Indian Army? Already it stands reduced to £15,142,790, as against £20,258,065 in the last financial year. But here let me impress upon the Council that it is, after all this is provided for, that our deficit stands at £6,500,000. Well, the question of my Honorable friend resolves itself into this—Can we undertake to do more in the coming year? Here I would remark that, immediately following on the heels of such a reduction as I have named, every further £100,000 becomes more and more difficult. Still, notwithstanding that difficulty, if we are only fairly supported by all the Presidencies, I do hope that even during the coming year we may fairly hope to do something more. In order to judge of our ground of hope in this respect, let us see what has been done in each Presidency towards reductions. The figures which I have already quoted are thus divided:—

MILITARY EXPENDITURE.

	Bengal.	Madras.	Bombay.	Total.
	£	£	£	£
1856-57 ..	6,247,517	3,005,283	2,050,981	11,303,780
1857-58 .	8,656,965	3,653,450	2,778,976	15,089,391
1858-59 .	11,613,022	4,633,774	4,011,269	20,258,065
1859-60 .	8,346,480	4,303,030	4,208,795	16,855,275

It will thus appear that, up to the present time, almost the whole of the reductions have taken place in the Bengal Presidency, including the North-Western Provinces and the Punjab. But the further reduction of £1,740,000 provided for is divided among the three Presidencies. It is only fair to say in respect to Bombay, that a considerable charge of an accidental character is included in their Military Expenditure of last year—I refer to Troops occupying Central India; and, further, that I believe that Presidency is earnestly endeavoring to reduce expenditure. With regard to Madras, it will be observed that, while the expenditure has been reduced in the Bengal Army this year by about £3,300,000, it has been reduced in Madras only by £300,000, and there must therefore be a large margin in that army for reduction, seeing that, as far back as May last, that Government sent to the Government of India an estimate of Military Expenditure for the current year of £2,782,000, and seeing also, that since then they have been engaged in establishing an efficient *quasi* Military Police. But can it be that that Government has up to this time exhibited little or no reduction, notwithstanding their professions and expectations a year ago, that they have rushed to the conclusion that we have been equally unsuccessful in Northern India, and that they have accordingly charged the Government of India with the grave crime, for such it would be, of deliberately rejecting all efforts to reduce? But I learn that, since the Military Commission visited Madras, a decided change has taken place, and that reductions are now in progress. The latest accounts I have received show that the Officers in that Service are exerting themselves to effect considerable reductions, and we

trust to their well known zeal to go on in that direction. Well, I have shown you that, in the present and coming year, we have provided for reductions to the extent of £5,142,790, and have brought down our Expenditure to £15,101,275 as against £20,258,065 last year. Can we undertake to reduce more in the coming year? Difficult as the task may be, and without wishing to be considered as absolutely committed to the task, yet after full enquiry and examination I may say that I think it possible, if we are only supported, as we have confidence we shall be, by all the Presidencies alike, that we may further reduce the Military Expenditure in the course of next year by a little over £800,000—making the entire reductions of the year upwards of £2,500,000, and of the two years no less than £6,000,000. Well, then, if we shall succeed in this, what will it bring the Indian Army down to? A cost of £14,258,065. Here I may pause to enquire what is the lowest point to which the Military Expenditure can be reduced? No doubt in the present uncertain state of the question with regard to the re-organization of the Indian Army, this is a difficult problem to solve with precision. But whatever else is unsettled, at least this much is settled—that whether we are to have an army of the line only, or an army composed of certain portions of line and local troops, yet at least this much is decided, that we shall no longer rest upon a Native Army, but upon a European Army: we shall no longer follow the fatal policy of keeping a European Army subordinate and supplemental to a Native Army. We shall renounce that policy, and keep a Native Army merely subordinate and supplemental to a sufficiently powerful European Army. But what additional expenditure does that infer, for at least some years to come? What in the shape of pay, of clothing, of barracks, of hospitals, of reliefs from Europe, of increased cost, does this change infer? No doubt, if we radically change the constitution of our Army, which we are rapidly effecting every day, we shall in the aggregate enormously reduce the number of men. But the lowest calculation in the relative cost of the two descriptions of Troops is that one European is equal to four Natives—some say nearer five. And, therefore, whatever reductions we may make numerically upon our numbers before the mutiny, yet it is certain that the entire cost of the men and more reliable defence will be much greater.

Thus arises the very important question, what is the minimum to which we can hope to reduce the cost of the Indian Army in its new constitution? Last year, referring to this subject, the Earl of Derby, when first Minister, and when Lord Stanley was Secretary of State, expressed an opinion, if I remember right, that the lowest point to which the costs of the Indian Army for the future could be reduced would be about fourteen millions and a half. Well, while we are charged with having done nothing to reduce expenditure, we have already made above the provision to reduce it to about fifteen millions for the coming year, and before the close of the year we propose to reduce it to fourteen millions and a quarter. Sir, I believe that, notwithstanding the heavy charges with which we are assailed, such a result will be highly satisfactory to every right-minded subject of Her Majesty, either in India or in England. Do not let it be understood that we take our stand even at fourteen millions and a quarter. No effort will be spared to make reductions even greater. But it would be merely committing a cruel and heinous deception upon the people of India and the people of England, if we could hold out any hope that we can efficiently hold India with European Troops without a large increase upon the cost of the Native Army prior to 1857. Well, then, admitting that we shall succeed in the additional reduction of £800,000, and reduce our Military Charges to £14,250,000, even then how will our deficit for next year stand? It will be £5,700,000 in place of £6,500,000.

But here I must say one word in reference to the position taken by the Madras Government in criticising the measures of the Government of India. They say they "can assign a fixed measure of the results to be obtained by a reduction of the Military Expenditure. This reduction can, and ought to be carried by the end of next year, or soon

after, to the full extent required to equalize Income and Expenditure." That extent was a deficit of £6,500,000. Well, I have shown that, in arriving at that deficit, we had already reduced Military Expenditure by £5,142,790, and brought the cost of the Army down to £15,101,275. Well, then, what must be the further reduction in order to accomplish what it is proposed to do? The whole deficit of £6,500,000 is to be reduced by the end of next year from a Military Expenditure of £15,001,275, or to a sum of £8,601,275, as the cost of an expensive European Army, the minimum expenditure for which has been calculated at £14,500,000, and while the cost of a chief Native Army in 1856-57 was £11,303,780.

Unfortunately, we are not furnished with a single figure, or with data of any kind, for so marvellous an operation as a reduction in two years of £11,742,000, bringing down the cost of the whole Indian Army, in its altered and improved condition, at once to a sum nearly *three millions* less than the Native Army cost before the mutiny. Sir, I require to say no more to show how utterly groundless and unsubstantial we must regard the vague and unsupported estimates upon which such a result can only be based.

But let me here remark, with regard to the great reductions we are making, and further proposing in the Indian Military Expenditure, that we feel the full weight of the responsibility which rests upon us, not only to re-adjust the finances, but as much to maintain for India ample defences. It may indeed be, and I sincerely believe that it will be so, that as long as we maintain in India an adequate European Force, and as long as we resist every temptation to revive the Native Army which has been dissolved, there is no probability that we shall ever again have a repetition of the events of the last three years; but looking to the altered state of intercourse in the Eastern Seas, looking to the many questions raised in reference to the political importance of Egypt and the Red Sea, and looking to the state of affairs in Europe every day becoming more seriously complicated, it would be impossible that a prudent Government, charged with the preservation of interests, both public and private, so enormous as are involved in the security of India, could be insensible to the duty of maintaining its Military defences in an efficient state. For certain it is, if ever we are to have another European war, and how long that may be postponed no one will venture to say, yet come when it may, it is certain that, in the altered state of things, we may expect operation in India and against India to form no small element in such a war. Therefore, Sir, while it will be our duty to persevere in the course we have begun of reducing expenditure to the utmost, it will equally be our duty to see that we take every precaution to preserve India, alike secure from internal disturbance and from foreign aggression.

Well, Sir, then if we succeed in making these reductions in the coming year, our deficit will still stand at £5,700,000. How is this to be provided for? We expect a small improvement in Customs. But with regard to the other taxes which we have proposed, under the most favorable circumstances we cannot expect a very large sum to come in course of collection within the next financial year, if we allow the necessary time required to bring them into operation. We shall indeed think ourselves very fortunate, if, in the first year, we realize £2,000,000 from these taxes and if, together with improved Customs, we can reduce our deficit to £3,500,000. The consolidated Stamp Bill will not come into operation till the first of September, but it is very difficult at present to form a precise opinion as to the financial effect it will have. The largest source of Stamp Revenue hitherto has been from Judicial and Criminal proceedings. With regard to Judicial proceedings the admirable Bill passed last year has so much curtailed litigation, that it becomes very doubtful if the loss under this head, and the loss under the head of Stamps upon Criminal proceedings in Bengal, will not go far to neutralize the benefits which might have been expected from this Bill. Well, then, how is this large deficiency still to be supplied? We wish to avoid having recourse again to open loans which have disgraced the financial system of India so long. As I explained

on the 18th of February, we may be able to make good this deficiency from the balances in the Exchequer, which of course would be reduced by that sum. But this is an operation which cannot be repeated. What, then, are we to rely upon in succeeding years? Well, we hope that, after the first year our new taxes may yield more richly; but it will then only be by a continuation of further reductions and of improved systems, that it will be, under the most favorable circumstances, possible to make both ends meet. Sir, the task is a most difficult one, and is surrounded with impediments, the full value of which no man can judge of who has not gone carefully into every part of the subject as it affects the present and the future. I say, Sir, without hesitation, that the re-adjustment of Indian Finance is a task so difficult, that except with the full and hearty concurrence and co-operation of all who are interested in the Queen's Government, I do not believe that it is possible. We cannot hide from ourselves that we have received a severe shock—a shock which it will require all the patriotism, self-denial, and zeal of the Public Service to counteract.

But then, Sir, coming to the second question of my Honorable friend—if we have so difficult a task in re-adjusting our taxation, even by the aid of the Income Tax, what are our prospects of being able to dispense with it at the end of five years? Sir, upon this point I am much more hopeful. Our great difficulty will be in the next three years. When we have once laid the foundation of a sound and liberal policy with regard to trade and finances, time then becomes a most important element. In the first place, I have no doubt that when we shall have broken down all the new Levies and Military Police, and the existing Police system of Burkundauzes, and shall have constituted from those experienced aids to the Civil power a well-organized Police Force under Europeans Officers capable of performing all the Civil duties hitherto performed by the Army, that we shall not only effect a very considerable saving, but that we shall also have a much more efficient force for keeping the peace. But to effect this change will require some considerable time. Again, we are upon the eve of introducing a new Currency system, which will not only give direct profits to the State, but will be productive of great indirect benefits, both to the State and to the Trade of the country. But although we shall be able to introduce the system in the present year in this Presidency Town, and perhaps also in the Presidency Towns of Madras and Bombay to some extent, yet any such development of it as will secure a large profit must be the work of a few years. But still, before the Income Tax expires, we look for some fruit from this source to supply its place. There is another important course to which I hope we may look forward with great confidence in the course of that time. I have already referred to the annually recurring drain upon us for some time to come for the interest of Railway Capital. But we may hope that, by that time, not only will the works in the main be finished and yielding traffic to pay the whole interest, but that the process of re-payment of the accumulated interest in the interim may have been commenced. But far more than this, do we expect that the development of the Commercial policy, which we feel it has been our good fortune to inaugurate; the increased internal traffic promoted by Railways and our Navigable Rivers and Canals; the external trade, both inward and outward, which must be the result; and last, and most importantly, the enormous impulse which all these combined causes must give to the productions and the labors of India, will give such an expansion and growth to all other existing sources of revenue, that we may well by that time be able to dispense with that tax. Moreover, we hope not a little from the administrative reforms which we have already commenced. For the first time in India we have just laid the foundation of an annual budget, proceeding upon estimates under each head of Services for the coming year, followed up by a system of issues strictly confined within the limits of the estimates for each Service, accompanied by concurrent audit and check as the year goes on, and concluded by final audit immediately upon the close of each

year. In the coming year, this new system will be but imperfectly carried out, but in the following year it will be in full operation, and we hope will be productive, both of increased efficiency and of great economy. These, Sir, are the means by which we feel confidence in our ability, if we only receive that willing and hearty support which we are entitled to expect, to meet the great difficulties which now stand in our way—to place the Finances of India upon a permanent and creditable footing, to avoid having recourse in times of peace to an habitual system of open loans, and finally, at the end of five years, to dispense with the Income Tax, the great engine by which alone this essential work can be performed.

Mr. SCONCE said, possibly it might be irregular for him on this occasion to address the Council, but he did desire to express his sense of the satisfactory explanation given by the Right Honorable Gentleman to the questions proposed by the Honorable Member for the North-Western Provinces. He would not presume to speak on behalf of any other Honorable Member, but for himself he would say that the additional information which the Right Honorable Gentleman had now given us, entitled him and the Government to well-grounded confidence regarding the executive measures of reduction which they had already undertaken, and which, he was satisfied, the Government was still prepared to undertake, so that the Council might be well assured of the wise economy with which those proceedings were regulated. He was somewhat unable to follow the details which the Right Honorable Gentleman had communicated to them. If he was not mistaken, the Military charges of 1856-57 were stated to have been, £11,300,000, and the Right Honorable Gentleman observed that, if the Government were enabled to enforce all the reductions they anticipated, the Military charges for the coming year 1860-61 would be £14,200,000. That was ostensibly an increase of three millions sterling for purely Military purposes, over and above the corresponding charges of 1856-57. He apprehended this estimate was not only satisfactory with respect to next year, but it was apparently a small increase on the Military charges of India in comparison with the charges incurred before the mutiny. But possibly the charges for 1856-57, taken at £11,300,000, included almost the whole of the Native Army, as it was embodied in that year. If that be the case, the 11 millions included a considerable portion of a charge which, as the Native Army of Bengal no longer existed, ought to be set down as a portion of the increase. Taking the total charge of 14 millions, in comparison with the charge of 11 millions incurred three years ago, there was apparently a net increase of 3 millions and no more; but if the 11 millions for 1856-57 included the charge for the disbanded Native Army, necessarily the real increase would be considerably more. Having had so much information from the Right Honorable Gentleman, he was very unwilling to ask for more, but he was sure it would be satisfactory to the Council if the Right Honorable Gentleman would print the estimate which he had now recited, so that the whole details of the calculation would be thoroughly intelligible.

Perhaps he might be permitted to say that the Right Honorable Gentleman had too lightly touched upon what was understood to be a source of large expenditure; he meant the various Military and Police levies. He (Mr. Sconce) spoke generally of these matters: he would speak as every body spoke of a charge of which he could not adequately measure the intent or the necessity: common opinion might be right or wrong: but he would say that it appeared to him that those new levies were like the vegetation of those luxurious creepers which ate into and destroyed the tree that bore them. He should be glad therefore if it were possible to include in the statement for which he asked, some account of the strength of these levies, which of late years so largely added to the public charges. The Right Honorable Gentleman had alluded to the reference that had been made from time to time to the

charges of the year 1856-57 as a standard of financial disbursements. For his own part he attached very great importance to the advantage to be gained from comparing the charges under which they were now laboring, with the more moderate expenditure which sufficed three or four years ago. He need hardly remind the Right Honorable Gentleman of the eloquent reclamations of a great man, to whom he must have often listened—reclamations that required England to fall back upon the charges of 1835; and though those demands failed, he would still hope it was not impossible to them to approach the limits of a much more recent year, with which alone they had to deal.

There was only one other matter of detail regarding which he desired to say a few words. The Right Honorable Gentleman had referred to the provision to be made next year, as he understood, for the Carnatic and Tanjore debts, and proposed that those debts should be paid out of the general balances of the Treasury. Now, he (Mr. Sconce) confessed he did not like this separation of a public charge from the expenditure generally chargeable to the public income, as if the balances of the treasury were a pocket preserve, into which the public should not pry. The treasury balances of this year, which it might be supposed would be carried on to make up the balances of the year now opening, were, he presumed, acquired from two sources, that is from the ordinary revenues and from the extraordinary income furnished by the public creditors. If, for example, there had been no extraordinary income, it was clear that such a charge as the Carnatic debt must have come out of the ordinary income, and therefore it seemed to him that, in whatever year it should fall, the sum payable should be classed with the expenditure of the year, and debited to the entire revenue available for its liquidation. He should like to see the Cash Balance of one year and current receipts, however derived, brought invariably into one account. These were the only remarks he would venture to offer.

Mr. WILSON said, if the Council would allow him, he would proceed to make a few remarks in reply to the observations of the Honorable Member for Bengal, although his Honorable friend was not quite regular in making them. His Honorable friend in the first place asked whether the eleven millions of Military Expenditure for 1856-57 included the Native Army which was abolished during that time. He (Mr. Wilson) had no doubt that it did, nor did he see why the Honorable Member should think it did not. But his Honorable friend said—though the logic of the conclusion at which his Honorable friend had arrived he (Mr. Wilson) did not understand—that the difference of cost must be included in the increase. Now that was not the case. The cost of the whole Military Force, including the Native Army, in 1856-57, was £11,300,000; since that time the Native Army had been very greatly reduced, while the European Army had been very greatly increased; the increase, as he had said before, of cost being in the proportion of 4 to 1, or, as it was believed by many, in the proportion of 5 to 1, for each man. We had changed the character of our men; we had changed the character of our Force. The real question, therefore, was—what was the cost of maintaining a European Army as compared with the cost of maintaining a Native Army.

With reference to His Honorable friend's remark about the Carnatic and Tanjore debts, the Government had no intention to make a secret of them, though if they had been included in the ordinary expenditure, it would obviously have been a mistake. If you wanted an account which showed the exact proportion of Income to Expenditure, you must reject all extraneous and accidental charges. If his Honorable friend wished, he was quite welcome to have the cash balance account, which would contain all that he required.

Mr. HARINGTON said, he would not occupy the time of the Council by entering now into the very clear and comprehensive details which they had just heard from the Right Honorable Gentleman opposite, in reply to the two questions which he (Mr. Haring-

Then the Council must be aware that, wherever our rule was suspended or disturbed, one of the first acts of those who rose in rebellion against us was to destroy the public buildings. The Government of the North-Western Provinces, thinking that it would be unfair to throw upon the country at large the burden of rebuilding these edifices, in order to provide the necessary funds for their reconstruction, imposed fines upon the inhabitants of the towns, cities, and villages in which, or in the immediate neighborhood of which, the property was situated, much in the same manner as was done in England, as regarded the hundred when property was destroyed by a mob or tumultuous assembly of persons. The fines so imposed had, in most cases, been realized, and the amount had been appropriated or was being appropriated to public purposes. Act X of 1858 would doubtless cover some of these cases, but it was feared that that Act would not cover them all. Private property, to a great amount, had also been destroyed in the way of punishment, or for the public convenience, or it had been taken for public use either without express authority of law, or without the observance of the prescribed legal forms. In this manner the very boats were taken, which formed the bridge over which our gallant troops crossed into Oude, first under the lamented Havelock, and afterwards under that gallant General and their Honorable and gallant colleague who, he regretted to find, was prevented by illness from attending the Council to-day. Though superior in rank, he mentioned their Honorable and gallant colleague last, because by an act the most noble, the most chivalrous, and the most self-denying, he assumed the second place when he might have occupied the first, not to escape from responsibility, but simply in order that he might not deprive the brow of his gallant companion in arms, who had already done such excellent service, of a single laurel. He was given to understand that not only was the restoration of these boats now claimed by the so-called owners of them, but that they actually demanded a large sum as compensation for the loss of their use from the time the boats were taken possession of by our officers. The claim seemed to him a most preposterous one. The boats were seized immediately after our re-occupation of Cawnpore, when the whole country was in a state of open rebellion against us, and formed part of the fleet in which our unfortunate countrymen and countrywomen embarked, when they fell victims to as foul and diabolical an act of treachery as was ever perpetrated. He (Mr. Harington) could not suppose that any Court would entertain the claim, but he mentioned the case to show the kind of claims which were being brought forward, and against which the Government or its Officers might have to defend themselves. He would not further occupy the time of the Council by entering into the details of other cases. He trusted he had said enough to satisfy the Council of the necessity and propriety of passing a Bill of indemnity to protect the Government and its Officers, and other persons acting under their authority, in respect to all proceedings held or orders passed in connection with acts committed during the period to which he was referring. This was what was done in Ceylon after the rebellion which took place in that Island in the year 1848, and which it was unnecessary for him to say was of a much less formidable character, and threatened much less serious consequences, than the recent revolt in India, and he could not doubt that the Council would consider the Government of this country and its Officers entitled to the same protection and indemnity which were afforded by the Ceylon Legislature to the Government and Officers of that Island, after the suppression of the rebellion there and the restoration of order and tranquillity.

The Bill was not intended to close the door of relief absolutely against any loyal subjects of the Government, who might have suffered loss of property at the hands of the Officers of Government, and others acting under their authority, during the period embraced in the Bill. Such persons, of

there were any, would still be at liberty to prefer their claims to Government, and he thought they might be satisfied that there would be every disposition to consider and deal with them in a fair and liberal spirit. All that the Bill aimed at was to prevent claims of the nature of those to which he had been referring from being made the subject of an action in either the Civil or Criminal Courts, against the Government or its Officers, and looking to the circumstances of the country at the period to which the Bill related, he hoped that the Council would concur with him in thinking that the Government and its Officers were entitled to this consideration or protection, if he might so term it.

The Bill was a short one.

In addition to the Preamble which explained the reasons which rendered the passing of the Bill necessary, it consisted of only two Sections. The first Section provided that—

"All fines, penalties, assessments, and contributions imposed since the 10th day of May 1857, in respect of the destruction or injury of Government or other property, or on any other account, by any officer of Government, or by any person acting under the authority of an officer of Government, shall be deemed to have been duly imposed and levied, if the same shall have been levied in pursuance of an order of Government, or shall have been, or shall be ratified by the Executive Government; and all officers of Government, and all persons acting under their authority, are hereby indemnified and discharged from liability in respect of any such fines, penalties, assessments, and contributions, and no suit or proceeding shall be commenced or prosecuted in respect thereof."

The second Section declared that—

"All acts done since the 10th day of May 1857, in connection with the late disturbances, by officers of Government, or by persons acting under their authority, in pursuance of an order of Government, or which shall have been or shall be ratified by the Executive Government, are hereby confirmed and made valid; and all such officers of Government and persons as aforesaid are hereby indemnified and discharged from liability in respect of such acts."

For obvious reasons the Bill had been drawn as large and wide as possible.

The Bill was read a first time.

BOUNDARY MARKS (FORT ST. GEORGE.)

MR. FORBES moved the second reading of the Bill "for the establishment and maintenance of boundary marks, and for facilitating the settlement of boundary disputes in the Presidency of Fort St. George."

The Motion was carried, and the Bill read a second time.

RELIGIOUS ENDOWMENTS.

SIR BARTLE FRERE postponed the Motion (which stood in the Orders of the Day) for the second reading of the Bill "to repeal Regulation XIX. 1810 of the Bengal Code, and Regulation VII. 1817 of the Madras Code."

PORT-DUES.

THE Order of the Day being read for the third reading of the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues)"—

MR. FORBES moved that the Bill be recommitted to a Committee of the whole Council, for the purpose of moving the substitution of the words "British India" for the words "Her Majesty's dominions in India" in Section I, and a similar verbal amendment in the Preamble.

Agreed to.

The amendments were severally carried, and the Council having resumed its sitting, the Bill was reported.

MR. FORBES then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

JAMSETJEE JEJEEBHOY BARONETCY.

The Order of the Day being read for the third reading of the Bill "for settling Promissory Notes of the Government of India, producing an annual income of one lakh of Rupees, and a Mansion House and Hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him and the heirs male of his

body, by Her present Majesty Queen Victoria, and for other purposes connected therewith"—

MR. LEGEYT said, the Council had heard the sanction of Her Majesty to the Bill sent home in December last, and as no alteration had been made by Her Majesty, nothing now remained for him to do but to move that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR LEGEYT said, one of the provisions in the Bill was that the present Baronet, Sir Cursetjee Jamsetjee, should now change his name to that of Sir Jamsetjee Jejeebhoy. In fact that was a condition of the grant made by the late Baronet for the support of the Baronetcy. He (Mr. LeGeyt) had been applied to by Sir Cursetjee Jamsetjee for information as to how the change of name should be accomplished, whether by order of the Supreme Council or of the Legislature, or in what other way, so as to render the measure legal. He should feel much obliged if the Honorable President would inform him how to proceed.

SIR BARTLE FRERE said, he apprehended that all proceedings with regard to this Bill were now closed, the Bill having been read a third time and passed. With regard to the other question, he thought it was a matter of prerogative, and rested with Her Majesty in England or her Viceroy in India.

SIR CHARLES JACKSON said, if a gentleman changed his name in England, he was required to publish the same in the *Gazette* at his own expense.

MR HARINGTON said, he thought that the matter was one which rested rather with the Executive Government than this Council.

SIR CHARLES JACKSON said, Her Majesty had the power to allow any one to change his name. Her Majesty having already given her assent to the Bill, it appeared to him nothing more was required.

MR. WILSON said, probably the better plan and a more regular course would be to address a letter to the Supreme Government, who would refer it to the Advocate General for his opinion.

STAMP DUTIES.

SIR CHARLES JACKSON said, he had been requested by the Honorable and learned Vice-President, who was prevented by public business from attending this Meeting of the Council, to ask for a postponement till Saturday next, of the Order of the Day for the adjourned Committee of the whole Council on the Bill "to consolidate and amend the law relating to Stamp Duties."

The consideration of the Bill was accordingly postponed.

LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

SIR CHARLES JACKSON moved that the Council resolve itself into a Committee on the Bill "for the registration of Literary, Scientific, and Charitable Societies;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee after a verbal amendment in Section XX, on the Motion of Sir Charles Jackson; and the Council having resumed its sitting, the Bill was reported.

ABKARRY REVENUE (BENGAL).

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to amend Act XXI of 1856 (to consolidate and amend the Law relating to the Abkarry Revenue in the Presidency of Fort William in Bengal)," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

MR. SCONCE said, since this Bill was reported on by the Select Committee, he had received a communication from the Bengal Government, suggesting a further amendment of Act XXI of

1856. As the Act now stood, spirits exported from this Port to another in the Continent of India, were obliged to pay duty, whereas spirits carried elsewhere were exempt, as drawback was allowed on spirits exported by sea to Foreign Ports. It was therefore proposed to repeal that portion of the Act which provided for the levying of duty here on spirits shipped to home Ports. The Government had suggested that a bond should be taken from the exporter to secure the Government from the loss of the revenue which would be suffered if the spirits were not imported in an Indian Port. But as the distillery duty leviable was remitted by way of drawback on spirits exported to Foreign Ports, it seemed sufficient to place spirits shipped to an Indian Port on the same footing, so that on importation the duty leviable on imported spirits by any Law in force, would be paid. He would therefore now propose the introduction of the following Section before Section I of the Bill :—

"Sections VIII, IX, and XV of Act XXI of 1856 are repealed."

MR. WILSON said, he doubted if he understood the object of the amendment. If he did, the proposition did not seem to him to be a proper one. The object, as he understood it, was that drawback should be allowed in respect to spirits which had paid excise duty, if exported to another Port in India. If that be the object of the amendment, it appeared to him to be a most objectionable one. He could quite understand the principle of allowing drawback on spirits exported to Foreign Ports. But if you were going to ship an article from one Port to another in India, upon which the Excise Duty had already been paid, there could be no good object in giving a drawback in one Port and re-imposing the duty in another, when the same Exchequer in each case was alone interested. The principle of drawbacks was always objectionable, and should be avoided whenever they could. If goods in bond upon which the duty had not been paid were to be removed from one Port to another, it was only a fair convenience to the Trader to permit such removal to take place under Bond, but to allow a drawback of duty already paid seemed objectionable. That was the practice in England, where it was quite unheard of to allow drawbacks on articles exported from one Port to another after the payment of duty.

MR. SCONCE said, he was acting entirely in conformity to the wishes of the Executive Government. The object of the proposed amendment was this—that, when spirits distilled in Bengal were exported to and consumed in Bombay for instance, Bombay should be credited with the Excise Duty, and not Bengal. This was the practice already allowed in the case of Salt.

MR. WILSON said, he understood then that, for the purpose of keeping the accounts of each Presidency distinct with regard to a branch of revenue that eventually went into one Exchequer, we were to run the risk of smuggling. Perhaps his Honorable friend would allow this Bill to stand over till next Saturday. It involved a new and important principle, and he should be glad if he were allowed time to give the question mature consideration. The case of Salt was very different, as you had not the same rate of duty on it everywhere. But it was not so in the case of spirits, on which a uniform rate of duty was levied.

MR. SCONCE having acquiesced, the further consideration of the Bill was accordingly postponed till Saturday next.

CHITTAGONG DISTRICT.

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to remove certain tracts on the Eastern Border of the Chittagong District from the jurisdiction of the Tribunals established under the General Regulations and Acts."

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

FINANCES OF INDIA.

MR. LEGEYT rose to say that, though he had no specific motion to propose, he would venture, on the indulgence of the Council, to put a question to the Right Honorable Gentleman, concerning the subject matter of which he had received many letters from Bombay and elsewhere. It concerned the imposition of new taxes not yet declared by Government, such as an increase of the Salt tax, a tax on successions, a tax on marriage ceremonies, and perhaps an enhanced Tobacco tax. Had the Executive Government abandoned all idea of imposing these? He thought that much good would come of declaring it to be so, if the Government had. If the Right Honorable Gentleman could, without impropriety, return an answer to the above question, it would tend, in a great measure, to allay the feverish state of anxiety which now prevailed among all classes. It would be well to give some public assurance as to where the Government intended to stop in the matter of imposing taxes.

MR. WILSON said, although his Honorable friend had been unable to give him notice of his question, he (Mr. Wilson) could not have the slightest hesitation in answering it, or in thanking him for the manner in which he had put it. The grounds urged by his Honorable friend for proposing the question appeared to him to be very just and reasonable. The object which the Government of India had in framing their policy was that, once and for all, decisive and ample means should be taken for placing the finances of India on a satisfactory footing, and when he made his statement to this Council, he communicated the whole of the measures which the Government of India had in view to effect that object. He could not therefore have any hesitation in saying that the Government of India had no intention of imposing any other tax in addition to those already proposed. Taxes on marriages, on successions, and on festivities of a variety of descriptions, had all been considered by the Government and rejected by them, if for no other reason, on the broad principle that all those taxes must have fallen almost exclusively on the Natives of India. The foundation of our policy was that the burden of taxation should fall equally on all our subjects in India, whether they were Europeans or whether they were Natives, whether they were officials or whether they were non-officials. Any principle which was at all opposed to that policy was studiously avoided. He would only once more repeat that the whole of the financial policy of the Government was contained in the Statement of the 18th of February.

BOUNDARY MARKS (FORT ST. GEORGE).

MR. FORBES moved that the Bill "for the establishment and maintenance of boundary marks, and for facilitating the settlement of boundary disputes in the Presidency of Fort St. George," be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

MR. FORBES said, when he moved the first reading of this Bill he stated his intention, if the Council permitted it to be read a second time, to ask that the Standing Orders be so far suspended as to allow the Select Committee which might be appointed, to report upon it after one month; and the ground of this application, he stated, was to avoid the great delay which was now constantly occurring to the Survey and Assessment officers. Under the present law, he had said, it was necessary to give every ryot ten days' notice for the purpose of marking the boundary of his field; and the large establishments of the departments, might have nothing to do in the meantime. He therefore begged to move that the Standing Orders be suspended to enable the Select Committee to present their Report after one month.

MR HARINGTON seconded the Motion, which was put and carried.

MR. FORBES then said that, the Standing Orders having been suspended, he begged to move that the Com-

mittee be instructed to present their Report after one month.

Agreed to.

JAMSETJEE JEJEEBHOY BARONETCY.

MR. LEGEYT moved that Sir Bartle Frere be requested to take the Bill "for settling Promissory Notes of the Government of India, producing an annual income of one lakh of Rupees, and a Mansion House and Hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet, lately conferred on him and the heirs male of his body, by Her present Majesty Queen Victoria, and for other purposes connected therewith" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

PORT-DUES.

MR. FORBES moved that Sir Bartle Frere be requested to take the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues)" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

INDEMNITY.

MR HARINGTON gave notice that he would, on Saturday next, move the second reading of the Bill "to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances."

PAPER CURRENCY.

MR. WILSON gave notice that he would, on the same day, move the second reading of the Bill "for the introduction of a system of Paper Currency."

The Council adjourned.

Saturday, April 28, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Sir H. B. E. Frere,	H. B. Harington, Esq.,
Right Hon. J. Wilson,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	and
	A. Scouce, Esq.

INCOME TAX; AND LICENSING OF ARTS, TRADES, AND PROFESSIONS.

THE CLERK presented to the Council a Petition of the Madras Native Association against the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," and the Bill "for the licensing of Arts, Trades, and Professions."

MR. WILSON moved that the above Petition be printed.

Agreed to.

PUBLIC CONVEYANCES (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. LEGEYT postponed the presentation of the Report of the Select Committee on the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

RELIGIOUS ENDOWMENTS.

SIR BARTLE FRERE moved the second reading of the Bill "to repeal Regulation XIX. 1810 of the Bengal Code, and Regulation VII. 1817 of the Madras Code."

MR. FORBES said, he was very sorry to be obliged to rise to oppose the second reading of this Bill. He was sorry, because he thought it was most desirable that the question to which the Bill related should be finally and definitively settled, and sorry because he feared that in opposing the measure he should lay himself open to much misunderstanding and misrepresentation, and should be accused of wishing to perpetuate a system which he really desired to see at an end, and

which he conscientiously believed would be brought to a full and final end more easily and more speedily by the adoption of other measures than those which, by this Bill, it was proposed to enact.

It was undoubtedly most desirable, and he said it most emphatically, that all connection between the British Government and the religious institutions of the Natives of India should be for ever severed, and that the management of all the concerns of their religious edifices, and of all the endowments by which they were supported, should be given over to the people, to be managed and controlled solely and entirely by themselves. He desired to be particularly understood as going quite as far as the Honorable Member who introduced this Bill on this question of a severance of Government from all connection whatever with the institutions now in question. He agreed with the Honorable Gentleman in the desirableness of the end to be attained, but he differed with him as to the means by which that end should be brought about.

He thought that the question of religion was ordinarily very improperly mixed up with the question of endowments of religious institutions, and that those who would endeavor to ensure due protection to endowment property were too often unjustly accused of supporting a false religion. The endowments of the religious buildings and institutions of the people formed a very valuable public and corporate property, for the due protection of which, quite irrespective of any question of religion, the community had a right to expect that there should be suitable laws. The property was generally of unknown antiquity, was, during the ancient Hindoo and later Mahomedan Governments, under the control and management of the Government of the day, and this control and management passed into our hands as one of the State responsibilities when we assumed the Government of India.

Our Government now, by law, stood towards this property in the same position as our predecessors in the Government stood, and the Officers of Government were guardians of the endowments under the laws which the present Bill was brought into repeal.

He offered no objection to this proposed repeal, on the contrary, he entirely approved of the measure, but he considered that, in repealing the existing law, it was an essential and simple act of justice that a new law should be passed, defining how and by whom the property was to be managed in future, and enabling the community who were interested to take measures for its protection.

But what did this Bill propose to do? It proposed simply to repeal the present law, and it left property to the value of some millions to the care of nobody knew who. It provided no rule of succession to the care of property, it provided no check whatever, and it would enable the person in charge, whoever he might be, to expend thousands of Rupees without the obligation of keeping a single account, and without responsibility to any one whatever.

He wished to make one remark regarding the value of the endowments to which this Bill referred. In the Madras Presidency the landed endowments of the institutions, now in question, in the Tanjore District were under charge of the Government Officers up to 1842 or 1843, and notwithstanding that the expenses of the institutions were fully met, and various public works were undertaken for the comfort and convenience of the people, when charge was given over to the people, there was a surplus in the Treasury of not less than fourteen lakhs of Rupees.

He had said that by this Bill it was proposed summarily to throw up the property now in question, and he would ask if this was a proper way, if it was a fair and just way of ridding ourselves of a responsibility which we voluntarily incurred when we undertook the Government of India. It might be, it would have been better never to have incurred the responsibility, or to have disconnected ourselves from it from the first, but

that we did not do, we had accepted it for more than half a century, and now proposed suddenly to throw it up with regard to ourselves alone and without a moment's thought or care about any thing or any one else besides—would this be a course of conduct that would be approved in private life? Supposing, for example, the Honorable Member who had introduced this Bill had received charge of certain property in trust for another, of which, from any cause whatever, he subsequently wished to be relieved—would he consider it right to re-deliver the property to the person from whom he had received it, or would he consider it a justifiable means of ridding himself of an inconvenient trust to throw the property into the street to be scrambled for by all comers?

He had said that it was proposed by this Bill to throw up property to the value of millions to nobody knew who, and this was no exaggeration. Let the Council see the present law. In Regulation VII. 1817, which was the Madras law which it was now proposed to repeal, it was provided that there should be Trustees for every endowment, these Trustees to be hereditary, or nominated by the founder or his representatives, or elected, as might be the ancient custom in each particular institution, but Section XII enacted that—

"In those cases in which the nomination has usually rested with the Government, or with a public officer, or in which no private person may be competent and entitled to make sufficient provision for the succession to the trust and management, it will be the further duty of the local agents to propose for the approval and confirmation of the Board of Revenue, a person or persons for the charge of trustee, manager, or superintendent, strictly attending to the qualifications of the person or persons selected, and to any special provisions of the original endowments and foundation, and to the general rules or the known usages of the country applicable to such cases."

Now, in repealing this law, it might be said that hereditary or nomination or elective trusteeships would continue to be filled as heretofore, but what was to become of those to which, under the Section of the law which he had just read, the Government Officer had hitherto appointed? The Bill made no provision for these, and certainly in Southern India they were by far the most numerous. The Bill, he said, made no provision for these trusteeships being filled by the act of the people themselves, and the result would be that, as the Bill made no provision for responsibility, the plunder of the endowment would be so valuable a privilege that there would be a scramble to obtain the office, and it would fall into the hands of the least scrupulous of the community.

But let the Council look at the Bill in another light. When the present laws are repealed, the Trustees of these endowments would have no superiors, no one to whom they would owe the least allegiance or obedience; and if, without committing any actual fraud, they were negligent and careless, and gave dissatisfaction to the whole community, who was to remove them from office? This Bill gave power to no one, and the Trustees would, in fact, be irresponsible.

The Honorable Member might say that he had brought in his Bill in its present very nude form for the purpose of eliciting suggestions from the several Governments, and in despair of being able to draw a Bill that should suit all the varying circumstances of all the Native Institutions. He would admit that there might be some of these institutions that required special and exceptional law, although he was not himself aware of any; but granting that there were such, their existence did not, in his opinion, form any ground for treating the great bulk of the endowments in the very unceremonious manner in which this Bill proposed to treat them.

He thought they should do their best to draw such a Bill as in their opinion would be generally suitable, and then leave it to be amended, if good suggestions of amendment were made, but he could not think it well to put forth to the world such a Bill as this, which—however little it might be intended by the Government—would lead every Native in India

to believe that the endowments of every religious institution in the country were to be given over to general pillage. He would suggest to the Honorable Mover of the Bill to refer it to a Select Committee for a preliminary report, and for the suggestions of any alteration that might be considered expedient before its publication in the *Gazette* under the 70th of the Standing Orders. If it were understood that this course would be followed, he would vote for the second reading; but if not, when the question was put, he would answer "no."

MR. SCONCE said, he entertained objections to this Bill of much the same nature as those which had been urged by the Honorable Member for Madras. He should have been glad, in the first instance, if the Honorable Mover of the Bill had stated more fully the grounds of the proposed measure. His Honorable friend had stated generally that the Bill was brought in at the request of the Right Honorable the Secretary of State for India. But he (Mr. Sconce) thought that it would have been more satisfactory if the Honorable Gentleman had himself stated his own grounds for the introduction of this summary enactment. He (Mr. Sconce) very much doubted, however, if the proposition which the proposed law imported corresponded with the suggestion of the Secretary of State. In the letter from the Secretary of State, of which an extract had been communicated to the Council, it was thus stated:—

"It appears, then, to Her Majesty's Government that the repeal of the Regulations in question, or such parts of them as relate to the management of religious endowments, should no longer be delayed; provision being made at the same time for an appeal to the established Courts of Justice in all disputes relating to the appointment and succession to the management of Hindoo and Mahomedan religious institutions, and to the control and application of their funds."

He (Mr. Sconce) did not profess to say that the meaning of the expressions which he had just read was clear and beyond doubt. The words were, that an appeal should be reserved to the established Courts of Justice. But he apprehended that the idea had not occurred, as indeed it could hardly have occurred, to the Right Honorable the Secretary of State, that a special provision, to open the Courts of Justice to protect the interests involved in these endowments, should now be made as if it had not already been made. He rather thought that it might have been the intention of the Secretary of State, in proposing to transfer the cognizance of these trusts from the Boards of Revenue to the Courts of Justice, to establish tribunals exercising powers more in the nature of an equitable jurisdiction than otherwise. He (Mr. Sconce) had said that he should have been glad to have heard the grounds for the introduction of this measure. It could not be simply to set aside the summary provision now made to meet the case of a vacancy occurring in the management of a trust, or when a complaint of malversation was preferred. It could not be, because justice was too easily rendered, or because the justice rendered to the parties interested cost too little. What would be the change in the present system which this Bill would effect? If a dispute should arise relative to the vacated management of a trust, or in case of malversation, nothing short of a regular suit would be requisite; but he apprehended that no Honorable Member would consider that to be an adequate provision for cheap and speedy redress furnished by the present law. He did not wish to magnify the matter. It was true that the trusts actually brought under the connizance of the Board of Revenue were few. The endowments throughout Bengal were abundant, and it might be that only one or two cases were, in the course of a year, brought before the Revenue Authorities. In fact, ordinarily speaking, endowments were administered by a system well recognised by the people without any public interference. But it seemed to him that, while the power vested in the Boards of Revenue had been rarely exercised, there was so much less reason now for proposing abso-

lutely to abolish the check provided by the existing law. Such cases of interference, as he had already said, had been very rare. He believed that they seldom occurred more than once or twice a year. A case occurred in 1858 relating to an endowment managed by a Hindoo Mahunt. The sum realised from the endowment was about 2,000 Rs. a year. On the death of the Mahunt, his successor was a minor, and under such circumstances it devolved, he might say necessarily, on the local agents to appoint a fitting representative for the minor. A case, comparatively recent, occurred in the Jessore District, in which local agents, certain native gentlemen, had also been empowered by the Government to control the disbursement of considerable funds appropriated to the support of a Hindoo Temple, and the immediate effect of this Bill would be to annul the appointment that the Government had made under Regulation XIX. 1810. A more important case was that of the Emambarah founded by Mahomed Mohsin in Hooghly. That endowment was supported by landed property yielding a lakh and a half of Rupees a year. That property was now in the hands of the Collector of Jessore. Of the net proceeds, one portion was devoted to purposes of a purely religious character, another portion was applied to educational, another to charitable purposes, and so on. The result of this Bill would be absolutely and summarily to withdraw the power which the Collector had to manage these estates, to discontinue the control now exercised by the local agents, and, in short, to cast adrift, without the control of any legitimate authority, the receipt of rents amounting, as he had said, to a lakh and a half of Rupees. Farther, it so happened, that the present Mahomedan manager of that endowment was appointed by Government. If, therefore, you destroyed the executive control now exercised by Government, and provided no means for the nomination of a successor in the event of the present manager dying, he (Mr. Sconce) could not help thinking that the Bill would prove extremely imperfect. He might also allude to money endowments that did not fall within the law which the Bill, now before the Council, proposed to repeal. In such cases the money was paid by Collectors, and he thought there could be no doubt as to the necessity of some enquiry, on the part of the Collector, on the demise of any of the present incumbents, before the allowance could be paid to the party succeeding him. But as money grants were not endowments within the meaning of Regulation XIX. 1810, the Bill of the Honorable Gentleman would furnish no relief in such matters. It so happened indeed that it was the desire of the Government of India, if possible, to change these money payments for grants of land. A recent case of that kind occurred in the Province of Cuttack, and the Government had thought it necessary to issue extremely stringent orders, with a view to secure the appropriation of the fund to the purpose for which it was originally granted. In a letter of August 1858, for example, it was stated that on preparing the deed of commutation care should be taken to show that the grant was not transferable or personal, and should be so made as to operate in good faith in respect to the legal rights of the pilgrims now and hereafter.

It seemed to him, therefore, that the proper course to take in dealing with this question was not summarily to ignore the necessity of some sort of legislation as this Bill invited us to do, but so to legislate that the affairs of endowments might be equitably and judiciously managed. It seemed to him important to notice one ground asserted, not, as he thought, without misapprehension, for the rescission of Regulation XIX. 1810. Some objection had been taken, in a religious point of view, as to Boards of Revenue, or other revenue officers as Christians exercising control over the affairs of Heathen Institutions. But he must say for himself that, with respect to the authority to administer such trusts, he (Mr Sconce) saw no difference between a Christian

Collector and a Christian Judge. If the duty was to be performed at all, it should be performed by the officer most competent for the duty. The only substantial matter of grievance was that the superintendence of these endowments, under the Bengal law, was made a matter of duty. By the law, an officer's management of endowments was volunteered. He confessed that the existence of such a provision was an unbecoming and unnecessary interference in matters of religion, and he agreed that it was expedient to get rid of so objectionable a feature in the present law; but at the same time he was satisfied that the course proper to be taken was not that suggested by the Bill now under discussion.

MR. HARINGTON said, with his Honorable friend the Member for Madras, he entirely approved of this Bill so far as it went. He thought there could be no doubt that, in proposing altogether to sever the connection which still existed between the Government and the superintendence and management of the religious endowments of their Hindoo and Mahomedan subjects, the Bill proceeded upon a perfectly right and sound principle, and he should be sorry therefore to see the Bill thrown out at the present stage. He must, however, say that he agreed in all that had fallen from the Honorable Member for Madras, and in much that had fallen from the Honorable Member for Bengal, as to the defects of the Bill, and it appeared to him that they should make an attempt to cure those defects before the Bill was published to the world.

It was of course quite right and proper that the fullest toleration should be allowed to the Natives of India for the exercise of their religion, and that the Government and its Officers should scrupulously abstain from any interference therewith; but this toleration, this principle of non-interference with the religions of the people, never required that they should concern themselves, as they had done, with the care, superintendence, and management of their mosques and temples and other places of worship, or with the property belonging thereto, or that they should do more than give to property of this description the same protection which was so important a part of the duty of the ruling power as regarded the property and persons of all its subjects, whatever might be their religious views, or to whatever class they belonged, and the disseverance of the Government connection, which this Bill proposed, should, therefore, be considered, be carried out as soon as possible with a due regard to the duty which he had just mentioned.

At the same time they must bear carefully in mind that, when in assuming the Government of this country, they determined in the execution of a wise and just policy, to continue to all religious institutions generally the endowments which they had received from former rulers of the country, so far from leaving those endowments entirely to themselves, or to the operation of the general laws, they enacted special regulations for their superintendence and management and to protect the funds arising therefrom from being wasted or misappropriated, and, furthermore, they took upon themselves the duty and responsibility of nominating competent persons for the superintendence and management of those institutions in all cases in which the nomination rested with the former rulers of the country, or lapsed to, or devolved upon, the Government for any reason. As had been mentioned by the Honorable Member for Madras, it was now upwards of sixty or seventy years since this was done in the two Presidencies to which the present Bill related, and having executed the trust during this long interval, he (Mr. Harington) did not see how they could now suddenly turn round and, because they might have done wrong at first, cast the whole of these endowments absolutely adrift, and say, that for the future they might take care of themselves, and that whatever might happen to them, it was no business of the Government. He apprehended that no Government could thus divest itself of an obligation voluntarily imposed and

continued to be exercised for a long series of years. It appeared to him (Mr. Harington) that at the same time that they severed the Government connection with the institutions in question, they were both morally and legally bound to make provision for the surrender of the trust, hitherto exercised by the Government, into the hands of competent persons, who should stand in the same relation to all such institutions and the property belonging to them as the Government had hitherto done, and should fill the places heretofore occupied by the officers of Government in respect thereto. He submitted that it was not sufficient to say the Courts were open, and that those who had claims might implead one another therein. Before a man could appear as a plaintiff in a Civil action, he must show that he had some *locus standi* in Court, and as no one could of right claim to succeed, on a vacancy occurring, to the office of superintendent and manager of an endowment, the nomination to which, to quote the words of the Bengal and Madras Regulations, was vested in, or had devolved upon the Government of the time being, the effect of passing this Bill in its present form would be to leave every such appointment, as it fell vacant, to be scrambled for or seized upon by all those who supposed they had, or chose to assert a claim to the same, though in reality no one could have any claim. The consequence would be great confusion, endless and bitter disputes, and immense waste of property. It appeared to him, therefore, that, in repealing Regulation XIX. 1810 of the Bengal Code, and Regulation VII. 1817 of the Madras Code, they were bound to make suitable provision for the discharge of the duties or obligations which now devolved, under those Codes, on the local Governments and their officers, and he hoped that the Honorable Member of Council, by whom this Bill had been brought in, would adopt the suggestion of the Honorable Member for Madras, and allow the Bill to be referred to a Select Committee before it was published, with a view to their considering and reporting what provision should be introduced into the Bill for the purpose of supplying what was now regarded as defective in it.

He thought it proper to add, that the great difficulty of making suitable provision on the point which he had mentioned, was the only reason why his Honorable friend, the late Member for Bengal, did not bring in a Bill to repeal the laws to which the present Bill related before he left the Council. Mr. Currie was most anxious for the repeal of those laws, but he fully admitted the necessity of providing some substitute for them.

Mr. LeGeyt said, he hoped that, after what had dropped from the Honorable Members who had already spoken, his Honorable friend, the Mover of the Bill, would consent to follow the course which had been suggested by the Honorable Member for Madras. He was not quite aware how we stood in the Western Presidency in respect to these endowments, but his impression was that the Government, on failure of persons having a prescriptive right over such property, stepped in as Lords paramount over all strays and waifs, and the course usually adopted was to call upon the town or community to name trustees who were approved by Government, and to whom the property was made over. In case of malversation he apprehended, on the motion of any one interested, the ordinary Courts of Justice could be appealed to, but there certainly was an uncertainty about these matters which had existed and been felt ever since the professed severance of Government from all religious institutions belonging to Hindoos and Mahomedans, and some definite law was, he thought, advisable. At any rate, he advocated an enquiry, such as a Select Committee would make, to determine whether legislation was advisable or not. But as the course proposed by the Honorable Member for Madras was very much the same as that suggested by the Honorable Member for the North-Western Provinces, he thought it very desirable that it should be followed

instead of allowing the Bill to be published in the usual course.

THE VICE-PRESIDENT said, he quite agreed with the Honorable Members who preceded him in the debate. It appeared to him that, in repealing these Regulations without providing some remedy, we should be guilty of great injustice. No one felt more strongly than he did, the necessity of dissevering the connection which now existed between the officers of Government and native religious institutions. The Regulations proposed to be repealed provided for two things—*First*, for the superintendence by the Revenue Authorities of native religious endowments; and, *secondly*, for the appointment of persons to the management thereof. Now, he quite agreed that it was most unnecessary and improper that the officers of Government should be called upon to see whether the funds of such institutions were properly administered or not, but if we repealed these Regulations which provided for that object without affording some suitable remedy for the protection of those trusts, great injustice would be done. He (the Vice-President) would read two Clauses from the Bengal Regulation which was now to be repealed. Section XIII enacted:—

"That in those cases in which the nomination has usually rested with the present or former Government, or with the public officer, or of right appertains to Government in consequence of no private person being competent and entitled to make sufficient provision for the succession to the trust and management (that was a case of a trusteeship becoming vacant), it will be the further duty of the local agents to propose, for the approval and confirmation of the superior Board, a fit person or persons for the charge of trustee or manager and superintendent, duly attending to the qualifications of the persons selected, and to any special provisions of the original endowment and foundation, and to the general rules of the known usages of the country applicable to such cases."

Section XIV proceeded to enact that:—

"On the receipt of the report and information required by the preceding Clause, the Board of Revenue or Board of Commissioners will either appoint the person or persons nominated for their approval, or will make such other provision for the trust, superintendence, and management as may be right and fit with reference to the nature and conditions of the endowment, having previously called for any requisite further information from the local agents."

If this Regulation were repealed, and the Government were to refuse to appoint trustees in cases in which the nomination rested with them, how would the local Courts act in the matter? The donor might, upon the faith of this very law, have vested this right in Government, and if the Government had once accepted the trust, it was hardly right now for the Government to throw it up without providing by law for such new appointments.

He (the Vice-President) did not agree with the Honorable Member for Bengal, that there was no difference between a Christian Collector and a Christian Judge so far as these endowments were concerned. In his (the Vice-President) opinion it was the duty of the Collector, under the present Regulations, to see that the funds of endowments were properly administered, whereas the Courts of Justice could only interfere for the purpose of carrying out the intentions of a donor, if a case were brought before them, in which it was alleged that his intentions had been violated. Another difficulty which presented itself to him was, who were the persons to bring such matters before the Civil Courts? If we relieved Collectors from the duty of superintendence, and the present trustees were to commit a breach of trust, who was to bring the case under the cognizance of the Civil Courts? In some cases the parties interested were mere pilgrims, and it could not be expected that such persons would have the means of bringing suits in respect of such property. This was a matter which he thought was deserving of the serious consideration of the Select Committee to whom the Bill was to be referred before publication. He quite agreed with the Honorable Member for Madras, to allow this Bill to be read a second time, and then

to refer it to a Select Committee, with instruction to submit a preliminary report, suggesting any alterations which it might deem expedient to make in the Bill previously to its publication in the Gazette.

SIR BARTLE FRERE said, he felt obliged to the Honorable Member for Madras for giving him an opportunity of explaining some circumstances connected with the history of the Bill which he had supposed to be better known than they appeared to be, and he would, first of all, beg to remind the Honorable Gentleman that the Bill was not brought in, in consequence of any private or individual views of his own, but in compliance with instructions of the Secretary of State. It was true that these instructions were immediately consequent on a memorial from certain Missionaries in Bengal, but they went no farther than to direct immediate action with a view to carry out orders issued long previously by the Court of Directors. As far back as 1833, on the passing of the Charter Act in that year, the most positive instructions were given by the Honorable Court, that their revenue officers should be absolved from all official connection with the management of such religious and charitable endowments as formed the subject of this Bill, and the question had been much discussed between the Honorable Court and the local Governments in India for many years previously. He need not remind the Honorable Gentleman how very cautious the Court of Directors was in sanctioning any proceeding which could possibly be considered as interfering with the prescriptive rights of such property or institutions as those to which the Bill related, and that nothing could have been farther from the intention of the Court than abruptly to throw up trusts which had either devolved on them from former Governments or been voluntarily undertaken.

There was a very considerable difference between the objections taken by the Honorable Member for Bengal, and those of the Honorable Member for Madras; and as the former affected the principle of the Bill, he would notice them first. He (Sir Bartle Frere) quite agreed with all that had fallen from the Honorable the Vice-President relative to the remark of the Honorable Member for Bengal, who had stated that, in dealing with these endowments, there was no difference between the duty of the Christian Collector and the Christian Judge. He (Sir Bartle Frere) could not better illustrate the wide difference which, in his opinion, existed, than by stating an instance within his own (Sir Bartle Frere's) experience. In the early part of his service, as Assistant Collector in the Deccan, he had found himself in the position of an ex-officio trustee for the due application of the offerings made to the idol in a temple in his district. It might then have become a part of his duty, as Assistant Collector, to see that the pice and cowries and other offerings placed before the idol were duly accounted for, and that the proper shares were paid in clothing for the idol and in salaries to the officiating priests, and that the balance was duly credited in the Government Treasury. Now, had the question been between two private parties, had two Brahmins been arguing before him as a Judge on the bench, he would have had no difficulty, after hearing the arguments on both sides, in deciding judicially the rights of both parties, and he did not see that he would have any right to object to having, as a Judge, to decide such cases. But he must say that, setting all personal and religious feeling aside, he could conceive nothing more anomalous or inappropriate than requiring a young Englishman to take a pecuniary official interest in the matter as Assistant Collector, and to decide what portion of the offerings should be given for the service of the temple, and how much he should lay hold of to put into the Government Treasury. Shortly after the time to which he referred, the matter was taken up by the Government of Bombay, and arrangements were made, by which all control over such endowments was taken away from their fiscal officers, and the endowments themselves left to be managed entirely by the parties interested in them, so

that their management never came before the officers of Government, except in the shape of judicial questions, to be decided between man and man. This change in the system of management had been carried out throughout the whole of the Western Presidency. He would remind Honorable Members that, up to this moment throughout Bombay and the Punjab, forming altogether a large portion of India, it was not necessary for Government officers to interfere with such endowments, except when a case was judicially brought before them in a Court of law. The object of this Bill was simply to carry the same policy out in Bengal and Madras. It was quite true that, when the change was first proposed in Bombay, some objection was made on the part of those interested in the endowments, but it was speedily removed by explanation of the real object of Government, and he believed he might say that all persons interested in these endowments were now entirely satisfied with the way in which they were administered, as far as the officers of Government were concerned in the Bombay Presidency, and he believed also in the Punjab.

This brought him to another point to which the Honorable Member for Madras had made reference, and which he (Sir Bartle Frere) thought would be best answered by reminding him how the management of these endowments had originally fallen into the hands of the officers of Government. The Honorable Member for Madras had correctly remarked that many of these were very ancient endowments, and that our connection with them had descended to us from the Hindoo and the Mahomedan dynasties which had preceded us in the Government of the country. But he (Sir Bartle Frere) would ask, what was the nature of the interest which preceding Governments took in these endowments? It was clearly not a religious interest, for the Hindoo Governments interfered in the management of Mahomedan endowments, and Mahomedan Governments in the management of Hindoo endowments. What then was the Government interest? It was simply a fiscal interest. Wherever there was any valuable endowment yielding a surplus income, the Government which preceded us invariably put in their hands and took a large portion of the surplus belonging to these endowments into their own Treasury, and for many years after we succeeded them we did the same. The Government interest in respect to such endowments was precisely the same as the Government interest in respect to escheats, for which, as he need not remind the Council, provision was also made in the Regulations which it was now proposed to repeal. The right to escheats was a right which naturally belonged to the sovereign, and after making due provision for all possible demands on such property the surplus went to the State. So it had been with these endowments. It was felt, very early in the history of our connection with these endowments, that this was not a position which our Government, as a Christian Government, ought to occupy, and that we could not consistently take any portion of these funds into our Treasury as part of our revenue. A considerable correspondence passed between the Supreme and local Governments, and action would have been taken in the matter long ago but for the difficulty of discriminating between the fiscal residuary interests of Government and the duties which they had in consequence taken on themselves as trustees of such property. There were some expressions in what had fallen from the Honorable Member for Madras, which might lead to the belief that action in this matter had been rather precipitate. But he was obliged to the Honorable Member for the North-Western Provinces for having brought to his notice that in 1845 and 1846 the question had been so far matured that a draft Act was prepared and brought forward by Mr. C. H. Cameron, which, after approval by Sir Herbert Maddock and Mr. Millet, was forwarded to the local Governments for their opinion. That draft Act contained provisions on many of the points referred to by his Honorable

friends. But what was the reply of the local Governments? Simply in effect that the local officers whom they had consulted were greatly divided in opinion. One portion declared that the draft Act proposed to do too much, while the other as strongly maintained that it proposed to do too little. When he (Sir Bartle Frere) first undertook to prepare a Bill to give effect to the instructions of the Right Honorable the Secretary of State, it appeared to him that a few simple provisions might be introduced into the Bill for the purpose of making general provision for trusts that might be otherwise uncared for. But he very soon found that it was impossible to do so, for there was nothing in the records of Government to show what amount of provision was required beyond what was already afforded by the ordinary Courts of law. As remarked by the Honorable Member for Bengal, it was very rarely indeed that the action of the Revenue Boards was called for in these matters, and when called for it was not easy to say in respect to what trusts their action was really required, and what might have been safely left to the ordinary action of the Civil Courts. He (Sir Bartle Frere) thought further that the objection of the Honorable Member for Madras, that in the proposed Bill all such trusts were left uncared for, would be sufficiently met if he (Sir Bartle Frere) stated, as he proposed presently to do, the course which he wished to pursue with respect to the Bill. The Council would observe that the Bill was intended to provide for the only general question which was involved in all, namely the Government connection with these endowments. It was for them to consider whether the fiscal officers of Government should cease to have that control and concern in these endowments which they now possessed. If you went one step beyond that, with a view to provide for details in a general measure like the present, he (Sir Bartle Frere) believed you would involve yourselves in a maze of difficulty. He would take the cases described by the Honorable Member for Bengal. His Honorable friend had cited the case of a Mahunt whose successor was a minor, in reference to which he (Sir Bartle Frere) would ask to what extent his Honorable friend would go in making special provision regarding minors and their rights in a general enactment of this kind? Such questions must clearly be left to be settled according to the general laws of the country. Then, again, there was the case of the Jessore charity to which his Honorable friend alluded. The description he had given reminded him (Sir Bartle Frere) very strongly of a very valuable charity at Bombay. The endowment was by a Parsee gentleman, Sir Jamsetjee Jejeebhoy, who wished Government to undertake the trust. But as there were many questions connected with the charity involving points of Parsee usage and religious practice, it was decided that it was better not to make Government trustees, though Government gave the founder every aid to make arrangements for the proper management of the charity, and he believed the result was perfectly satisfactory. The case at Jessore would appear to have been of a very similar character. Then, again, the Honorable Member referred to the case of the Hooghly Emambarah which was a very extensive and valuable endowment, which, on its own merits, well deserved to be provided for either by a separate charter or a separate enactment, or some equally distinct provision, just as was the case of the Martiniere in this City. He (Sir Bartle Frere) could not believe that his Honorable friend thought that the management of the Martiniere would be improved if it were left in the hands of the fiscal officers of Government. So again with the Cuttack grant, which he (Sir Bartle Frere), judging from what his Honorable friend had said, should rather have quoted as an instance of what should be done with the object of preventing malversation without any special provision in a general Bill like that before them. He would not occupy the time of the Council further, but would proceed at once to explain the course which he proposed to pursue with regard to the

Bill. If the Bill were read a second time, he proposed to refer it to a Committee and then to forward it to the local Governments for more precise information as to the charities which were now administered by the Boards of Revenue, and would be affected by the Bill. It was found in Bombay to be sufficient to transfer the management of such trusts by a simple deed or order of Government without any legislative enactment, but there might be special cases in which there was good ground for granting either a special charter, as it were, or for passing a special enactment. If the necessity for any such special enactment could be shown, let it be brought in separately and considered on its own merits, but he could not see any possible good in burdening a general measure of this kind with a multitude of separate provisions for the better administration of trusts which were so varied in character and requirements.

He would leave it to the Council to determine whether that would be a satisfactory way of proceeding. But if the course he proposed were adopted, he hoped that, before the Bill was reported on, they would see more clearly than at present whether any special enactment was really necessary, or whether it was not competent to the Executive Government, in the exercise of their ordinary power, to pass such orders as would afford efficient protection to all the trusts and property affected by the Bill. He need not assure his Honorable friends that nothing was farther from the intention of the Government to throw off these trusts and to allow the property to be played ducks and drakes with. He fully agreed with Honorable Gentlemen that it was the duty of Government to make proper provision for the protection of such property, and he hoped that the Honorable Member for Madras would be satisfied with the course which he proposed to take.

MR. FORBES said, if the course proposed by the Honorable Member involved the publication of the Bill before it was reported on by the Select Committee, he would certainly object to its second reading. But he had no objection to withdraw his opposition to the second reading of the Bill if the Honorable Mover consented to refer the Bill, under the 70th Standing Order, to a Select Committee with instructions to submit a preliminary Report on the Bill, and to propose such amendments as they might consider necessary before its publication.

SIR BARTLE FRERE said, he was quite willing to adopt that course if the sense of the Council was in favor of it. But he must say that he did not participate in the apprehension felt by his Honorable friend as to the consequence of the publication of the Bill as it now stood. He (Sir Bartle Frere) had seen a similar measuse carried out in another Presidency without any alarm. With the permission of the Council, however, he would at the proper time move the necessary instruction to the Select Committee as suggested by his Honorable friend.

MR. WILSON said, if that course were to be adopted, he supposed that it would not interfere with the course proposed by the Honorable Mover of referring the Bill to the local Governments for information on the points indicated by him.

MR. FORBES said, the course proposed by him would certainly not have that effect.

The Motion was then put and carried, and the Bill read a second time.

INDEMNITY.

MR. HARINGTON moved the second reading of the Bill "to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances."

MR. SCONCE said, he had only one or two remarks to make with regard to this Bill. He confessed it appeared to him that it was not very clear whether the Bill might not be taken to cover acts done at the present time or at any future time. It was an Act intended to indemnify all public Officers in the North-Western Provinces for some acts done or supposed to have been done in connection with the late mutiny. For himself he could have

no hesitation in affording the largest indemnity—an indemnity drawn in the widest possible terms—for acts done whilst the mutiny and rebellion prevailed, whether on the part of Civil Officers for the restoration of order, or on the part of Military Officers in the course of operations in the field, or in making requisitions for supplies, boats, carts, or whatever assistance might have been needed. For those purposes, he could have no hesitation in giving the utmost guarantee that the Officers concerned should not now be called to account. Moreover, as to the cases mentioned by the Honorable Member for the North-Western Province in support of his motion for the first reading of the Bill, he quite agreed that they formed sufficient ground for legislative indemnity. But it appeared to him that the words of the Bill, as it now stood, had a much more general import. The Preamble recited that "whereas fines and penalties have been imposed and levied by Officers of Government in respect of acts committed during the late disturbances, and whereas assessments and contributions have been made and collected for the reconstruction or repairs of public buildings destroyed or injured during the same period, *and for other purposes.*" For what other purposes, he would ask, was indemnity required?

Again, it was said that it was expedient to indemnify Officers "in respect of the said fines, penalties, assessments, and contributions, and of *any other acts* which may have been done by them." It did not say that the indemnity was to be in respect of *any other acts* done in 1857, or in 1858, but, as it might also be taken to mean, in respect of acts done to the close of 1859 and even to the time at which he now spoke.

The words of the 1st Section of the Bill were:—"All fines, penalties, assessments, and contributions imposed since the 10th day of May 1857 in respect of the destruction or injury of Government or other property, *or on any other account.*" And thus, by the adoption of such words, for whatever purposes any public Officer might have imposed a penalty or levied a contribution, he would be indemnified under this Bill.

Again, in Section II, it was stated that "all acts done since the 10th day of May 1857 *in connection with the late disturbances*" were confirmed and made valid; and here again he must say that, both as to the matter of time as of facts, the words used were indefinite and objectionable. Allusion was made by the Honorable Member for the North-Western Provinces, when he introduced this Bill, to the Ordinance passed in Ceylon during Lord Torrington's administration as a sort of precedent for the present measure. But he (Mr. Sconce) apprehended that this Bill went much beyond the Ceylon Ordinance. That Ordinance comprised a period from 28th July to the 10th October of the same year, that was only a few months during which martial law prevailed in that Colony; and it was also important to notice that the operation of the Ordinance was not only restricted to the time of the prevalence of the rebellion, but was also confined to acts done during that period to maintain the public safety, that is, acts for the suppression of insurrection, for the protection and safety of life and property, for the trial of offences, for the arrest and detention of persons suspected to be engaged in insurrection, and for the seizure and sale of the property of such persons. Thus it would appear that the words of the Ordinance were expressly confined to acts connected with or immediately arising from the rebellion. His objection now was that the present Bill was not confined to acts of public Officers done during the mutiny, but extended, in the widest language, to acts done throughout 1859 and down to the present moment.

We all knew that eighteen months had elapsed since the Queen's Proclamation was promulgated. That Proclamation condoned all offences committed during the mutiny; and he wished to have some security that, since the months of November or December 1858, Government Officers in the North-Western Provinces had not, in spite of that amnesty, done any acts for which indemnity should not now be given. He

felt it necessary to express his own impression of the objectionable form in which the Bill was drawn. He had no desire, however, to oppose the second reading. Possibly some information would afterwards be given to the Council as to the nature of the acts done by public Officers since the restoration of peace, which would enable them without any hesitation to accept a measure offering a general indemnity: or it might be found possible to limit the measure to a date beyond which special protection to official acts would not be required.

MR. LEGEYT said, he had no intention of opposing the second reading of this Bill. He thought it a very necessary and proper measure. At the same time he thought that, unless absolute necessity for extension existed, it would be better to limit the indemnity to the 1st November 1858, as suggested by the Honorable Member for Bengal. And, before giving his assent to the second reading of the Bill, he should certainly be glad to hear what the Honorable Mover of the Bill had to say in answer to the objections taken by the Honorable Member for Bengal. As he now viewed the cases, he should prefer the indemnity to stop at the date of the Queen's Proclamation, that is, the 1st November 1858. After that date, it appeared to him that there should be no excuse for any acts done without the special authority of law. He should be glad, however, of further explanation on this head.

MR. FORBES said, if such a Bill as that now before the Council had been introduced in connection with ordinary times and under ordinary circumstances it would certainly have been thrown out. But when it was remembered how very peculiar the times of the mutiny were, and that men were daily and hourly fighting in defence of their lives, and of the great public interests committed to their care, it would not do to look with too keen an eye of with too close a scrutiny at acts done under such circumstances. Referring to the suggestion of the Honorable Member for Bombay, for limiting the indemnity to the date of the promulgation of the Queen's Proclamation, Mr. Forbes said it must not be forgotten that in reality the disturbances were not at an end in the North-Western Provinces at that time, and he thought therefore that we could not refuse to ratify acts done by Officers of Government in connection with those disturbances, although the acts might have been performed after the promulgation of the Queen's Proclamation. It should be borne in mind that this Bill did not propose to give entire indemnity to every officer for every act done by him, but only to officers acting "in pursuance of an order of Government" in respect of acts "which shall have been or shall be ratified by the Executive Government," and which were done "in connection with the late disturbances." Considering, therefore, the great fact of the mutiny, and the very extraordinary and exceptional circumstances under which public officers were called upon to act, he really thought it very inexpedient to bring their acts under public discussion, and to leave them liable to judicial investigation, when those acts were done at a time when no man felt any security that he would not be murdered before the next hour struck.

MR. HARINGTON said, he did not know that he could say more in support of this Bill than what was stated by him in the remarks with which he prefaced the introduction of the Bill at the last meeting of the Council, nor was he aware that he could, with advantage, add any thing to the information which was contained in those remarks. He had been for some time in correspondence with the Honorable the Lieutenant-Governor of the North-Western Provinces on the subject of this Bill, but the correspondence being private, he did not consider himself at liberty to lay it before the Council. The Bill had been introduced at the request of the Honorable the Lieutenant-Governor, and a draft of the Bill having been forwarded to His Honor before the Bill was read a first time, he (Mr. Harington) had just received a telegram from him, in which he expressed his entire approval of the provisions

of the Bill. Assuming the necessity, after all that had occurred, of a Bill of Indemnity of some kind, which he understood was not disputed by the Honorable Member for Bengal, he begged to assure that Honorable Member that the Honorable the Lieutenant-Governor of the North-Western Provinces would have been very glad if, as suggested by the Honorable Member for Bengal and the Honorable Member for Bombay, a more restrictive character could have been given to the Bill, but it had been found that this could not be done without running the risk of rendering the Bill much less effectual than was really necessary or desirable, and of its failing, in consequence, to accomplish the object aimed at in its introduction. This was one of the reasons why the particular dates proposed by the Honorable Members for Bombay and Bengal could not be taken for limiting the operation of the Bill. Many orders had been passed subsequently to the period mentioned by those Honorable Members which, there could be no doubt, ought to be covered by the present Bill. He was quite sure that the Honorable Member for Bengal would agree with him that, if a Bill of indemnity was to be passed, there would be a great advantage in its being so framed as to meet every case in respect of which it might be proper to give indemnification in order, if possible, to avoid the necessity of further legislation in the same direction which would, for obvious reasons, be very inconvenient. It was this consideration which induced him to draw the Bill in the large terms in which it was expressed. At the same time he begged to say that he should be quite prepared, if the Council would allow the Bill to be read a second time, to consider any alterations in the details of the Bill which the Honorable Member for Bengal, whom it was his intention to ask to serve on the Select Committee, or any other Honorable Member, might think proper to propose when the Bill got into Committee. The Honorable Member for Bengal seemed to admit that there might be valid reasons for extending the operation of the Bill to cases such as those which he (Mr. Harington) had mentioned in his introductory remarks, but he was afraid that the Bill might cover many other cases in respect of which no indemnity should be given. But although in the remarks just alluded to, he had mentioned only three classes of cases, because he did not wish to occupy the time of the Council by going into lengthened details, and because he considered that he had stated enough to satisfy the Council that sufficient ground existed for their passing a large and comprehensive Bill, such as that introduced by him, the Honorable Member for Bengal must not imagine that many other descriptions of cases could not be mentioned, in respect of which it would be equally proper to indemnify the Government and its officers. New and novel cases, in which, as he said before, the officers of Government were obliged to act according to the best of their judgment, either without the authority of any law, or as sometimes happened, in direct violation of a positive law, were, he was informed by the Honorable the Lieutenant-Governor, constantly being brought to His Honor's notice, and required to be dealt with in reference to their peculiar circumstances. It was impossible to say how long this might go on, but it was necessary to make the terms of the Bill large in order to meet all such cases. The Honorable Member for Bengal was, he believed, in Calcutta during the whole of the eventful period to which the Bill related, and he (Mr. Harington) could easily understand the difficulty experienced by the Honorable Member in realizing the actual state of the districts which were the scenes of the recent disturbances. No one, indeed, who was not on the spot at the time of those disturbances, or did not visit the districts in which they occurred very shortly afterwards, could feel in their full force the very great difficulties with which our officers had to contend, or thoroughly appreciate the noble manner in which they had performed their task. The utmost promptitude of action was often called for without caring much whether there was any law or not to support what was done. The officers of Government would

have grievously failed in their duty to the State and to themselves had they shrunk from the responsibility of acting as circumstances rendered necessary, or troubled themselves about Regulations, Acts, and Circular Orders, which, however suitable and proper in seasons of tranquillity, would, in the then circumstances of the country, have only impeded action and proved a clog upon the Executive. He could not believe that the Council had any wish to sit in judgment upon the local Government and its officers, in respect to acts done, proceedings held, or orders passed by them, in connection with the events of the period to which the Bill related, for, after all, though the Bill was largely worded, its application, as had been clearly pointed out by his Honorable friend, the Member for Madras, was limited to the acts of that period, or to any acts or orders which, though subsequently performed or passed, were connected with the disturbances out of which the Bill had arisen. For instance, the public buildings at Agra having been destroyed during those disturbances, a fine to provide funds for their reconstruction was imposed upon the City of Agra, and the towns and villages in the immediate neighbourhood thereof. But though the destruction of the buildings took place in the month of July 1857, it was not until some time in 1859 that the fine for their reconstruction was ordered to be levied. He thought that they might fairly assume that all acts, proceedings, and orders of the local Government and its officers, which the Bill was required to cover, emanated from a high sense of duty, were *bonâ fide* in their character, and were considered necessary at the time for the restoration or preservation of order and tranquillity, or for the future security of our possessions in India. Such being the case, he trusted that the Council would agree with him that they were bound to indemnify and discharge the Government of the North-Western Provinces, its officers and others acting under their authority, from liability in respect of all such acts, orders, and proceedings in the same manner as was done in Ceylon after the rebellion in that Island, and that they ought not to allow those acts, &c., to be brought under the revision and criticism of the ordinary Civil and Criminal Courts or to be subject to their decision. It might be very true, as noticed by the Honorable Member for Bengal, that the present Bill went beyond the Ceylon Ordinance. But the recent revolt in this country was of a much more formidable character than the rebellion in Ceylon, and much more severe and violent measures were consequently necessary or unavoidable in contending with those who were engaged in it.

The Motion was then put and carried, and the Bill read a second time.

LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

MR. FORBES moved that the Bill "for the registration of Literary, Scientific, and Charitable Societies" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

CHITTAGONG DISTRICT.

MR. SCONCE moved that the Bill "to remove certain tracts on the Eastern Border of the Chittagong District from the jurisdiction of the tribunals established under the General Regulations and Acts" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

STAMP DUTIES.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to consolidate and amend the law relating to Stamp Duties," the Council resolved itself into a Committee for the further consideration of the Bill.

THE CHAIRMAN moved the omission of the word "and" before the word "Regulation" in the 41st line of Section I, with a view to his subsequently moving the insertion of the words "Section XXXVII of Act X of 1859 (to amend the law

relating to the recovery of Rent in the Presidency of Fort William in Bengal)" before the word "are" in the 49th line of the Section.

Mr. HARINGTON said, he had carefully considered the amendments proposed by the Honorable and learned Chairman under this head of the Bill. He was bound to admit that from the first the Honorable and learned Chairman had been quite consistent in his objections to the Section in Act X of 1859, which it was now proposed to repeal; and on referring to the debates which took place at the time, he found that when the motion was made that the Section in question should form part of the Bill, the Honorable and learned Chairman divided the Committee against it, though the result was that he stood alone in his opposition, the ayes being 7 and the noes 1. Of the 7 members who composed the majority in favor of the Section, 3 only were present in the Council to-day, namely the Honorable Member for Bombay, the Honorable Member for Madras, and himself. He (Mr Harington) certainly saw no reason to regret the vote which he gave in favor of the Section, much less to recall that vote, and he trusted that his Honorable friends the Members for Bombay and Madras continued of the same mind in which they were at the time when they also voted for the Section. The Right Honorable Gentleman opposite (Mr. Wilson), the Honorable Member of Council on his left (Sir Bartle Frere), and the Honourable Member for Bengal having joined the Council since Mr. Currie's Act was passed, were of course unfettered by any previous votes given in respect either of that Act generally or of the particular Section under consideration, but he trusted they would excuse him for saying that, in coming to a decision to-day on the question before the Committee, the fact that the Section was carried by, what he must call, an overwhelming majority, and ordered to stand part of the Bill, should have considerable weight with them, the more especially as in that majority were included the present very able and practical Lieutenant-Governor of Bengal, Messrs. Ricketts and Currie, two of the oldest and ablest Revenue Authorities in India, and the Honorable and learned Judge (Sir Charles Jackson) whom he did not see in his place to-day.

If the Bill before the Committee proposed a general or partial increase in the amount of stamp duty chargeable upon petitions of plaint or appeal in the Civil Courts of the Bengal Presidency, there might be some reason for proportionately enhancing the amount of the stamp duty chargeable on the statement of claims cognizable by the Revenue Courts under Mr. Currie's Act. But the Bill proposed no such increase. The finances of the State were not in a worse state now, than they were at the time Mr. Currie's Act was passed, and they knew that several measures were under consideration which, if successful, as he sincerely hoped they would be, would no doubt at an early date, have the effect of restoring that equilibrium between income and expenditure which was so essential to the well-being of a country. They were not told, upon any reliable authority, that Mr. Currie's Act had not worked well, or that it had disappointed the expectations of its framer and supporters. Nor were they informed that the Section under consideration had been abused, or that it had led to abuse, and they had no statements before them to show even that any loss of public revenue had resulted from the operation of the Section. Surely then it behoved them to pause and to consider whether any sufficient grounds existed for altering or mutilating an Act which was passed by the Council, after very full discussion, little more than a year ago, and in respect of which, as he stated at the last meeting of the Committee, the Right Honorable the Governor-General, in giving his assent, declared his belief that it would confer a great practical benefit upon the agricultural population in Bengal.

He did not overlook the fact that the amendment proposed by the Honorable and learned Chairman was favorable to the ryot, as respected all claims in which he was

interested, not exceeding the sum of sixteen Rupees in amount or value, with exception to suits for the recovery of arrears of rent, in which, although the landlord appeared as plaintiff, the extra duty now proposed to be levied would fall on the tenant in the event of his being cast and ordered to pay the costs, as would generally be the case. The amendment might, therefore, be considered as less objectionable in some respects than if the concluding part of it were of general application. But he must say that, whatever cause the ryot might have for congratulation as regarded himself, arising out of the exceptional character of the amendment, the classes who would fall within the provision mentioned at the end of the amendment would have some ground to complain of the one-sidedness of that provision.

Looking, however, at the amendment merely in its bearing upon the zemindars and Government farmers, he would ask—were they quite sure that in their endeavors to squeeze a little more stamp revenue out of those classes in the first instance, they should be really consulting the interests of Government? He need not tell the Council that from very early times the tendency of the legislation in this country had been to give greater facilities to the holders of land, to enable them to realize their rents by means of legal process, than were enjoyed by any other classes of creditors against their debtors; and why was this? The answer was obvious. If the zemindar could not realize his rent promptly, he could not pay his revenue promptly. He (Mr. Harington) knew no other reason for the distinction. It was explicable and justifiable on this ground. It was inexplicable and could not be justified on any other ground. Here, he thought, they discovered the origin of summary suits for arrears of rent, and as suits strictly of a summary nature were done away with by Mr. Currie's Act, for the simple reason that, under the system of adjudication introduced by that Act, they were no longer required, it seemed to him that, if [illegible] adopted the amendment of the [illegible]able and learned Chairman, [illegible] would be doing very serious injury to the zemindars in a manner not contemplated, and that the injury might extend not only below but also above them.

He was not ignorant that complaints had been made by some of the Bengal zemindars against Act X of 1859. But it was not the Section under consideration of which they complained. What they objected to was that the Act had weakened their influence as landed proprietors, and that they could no longer exercise the same authority over their tenantry which they previously exercised. This, however, was only to confess that the Act had accomplished one of the objects aimed at in its introduction, and he should be very much mistaken if the Honorable and learned Chairman regarded this as any defect in the Act. He had yet to learn that any Bengal zemindar considered himself aggrieved by that part of Section XXXVII of Act X of 1859 which it was proposed now to repeal.

The adoption of the Honorable and learned Chairman's amendment might lead to some little addition to the stamp revenue. The amount, however, would be a good deal reduced by the lower duty of four instead of eight annas proposed to be taken on all claims preferred by ryots for a sum not exceeding sixteen Rupees, and he could not help thinking that any gain under the head of judicial Stamp Revenue, derived from the operation of the amendment, supposing it to be carried, would be more than counterbalanced by the loss of land revenue which might be expected to ensue, if, by increasing the law charges or the amount of the institution fee, they placed additional difficulties in the landlord's way of realising his rents through the agency of the Courts. He hoped that the Right Honorable Gentleman opposite would not consider that he was presuming upon his supposed ignorance in these matters, or that he was making use of an *ad captandum* argument to gain his vote; but he really thought that what he had just said was deserving of the Right Honorable Gentleman's consideration.

For the present he (Mr. Harington) would leave Mr. Currie's Act entirely

alone, and confine the Bill before the Committee to the objects contemplated in its introduction. As he said on a former occasion, the repeal or alteration of any part of Mr. Currie's Act certainly did not originally form one of those objects. At the same time it might be advisable to call upon the Lieutenant-Governors of Bengal and the North-Western Provinces, and from the members of the two Boards of Revenue, for a report upon the working of Mr. Currie's Act, and especially of the Section under consideration; and in order to satisfy themselves as to whether that Section had been productive of any and what loss of public revenue, returns might be required showing this amongst other particulars. These reports and returns might be called for by the Executive Government or by this Council through the President in Council. It was immaterial in what way the information was obtained, but he did not think that they should take any steps towards altering Mr. Currie's Act without having this information before them. For these reasons he could not give his assent to the motion of the Honorable and learned Chairman at the present time.

The CHAIRMAN said, whatever might be the objection of the Honorable Member for the North-Western Provinces to the insertion of the Clause, of which he (the Chairman) had given notice, in substitution for Section XXXVII of Mr. Currie's Act, there could be no objection to the amendment now before the Committee. The Council were about to pass an Act to consolidate the Stamp Laws, and the Act ought to be as perfect in itself as possible. If any Section of Mr. Currie's Act related to Stamp Duties, that Clause ought now to be repealed by this Bill. He would, at present, offer no opinion on the question as to whether that Section of Mr. Currie's Act should be modified or re-enacted by this Bill. But he would confine himself simply to the question before the Committee as to the omission of the word "and."

Mr. HARINGTON said, he could have no objection to the omission of the word "and," nor to the proposed repeal of Section XXXVII of Mr. Currie's Act, on the understanding that that Section, as it now stood, was to be re-enacted and introduced in Schedule B of the Bill before the Committee. But he might mention that there were other Acts which contained similar provisions relating to Stamp Duties, as, for instance, Act VIII of 1859; and to be consistent, the Council must repeal all such provisions in existing enactments.

The CHAIRMAN said, he had now proposed the repeal of Section XXXVII Act X of 1859. If the Honorable Member for the North-Western Provinces would, in like manner, propose the repeal of any provisions in the existing Acts which related to Stamp Duties, he (the Chairman) would be glad to support his amendment.

Mr. WILSON said, two questions presented themselves to his mind, arising out of the present motion, first, whether this was to be a complete Stamp Law in itself—and, secondly, whether we should interfere with the policy of the Bill passed last year. There could be no doubt as to the first, and he therefore thought that, when we were consolidating the Stamp Laws, we should condense into one law a variety of Clauses now existing in other laws. With that view he would support the motion for the omission of the word "and," and the following amendment "providing for the repeal of Section XXXVII Act X of 1859." But in doing so, he desired it to be understood that he would not be bound by that decision to vote for the other measure. If there were other Acts containing stamp provisions, not merely descriptive, but actually imposing Stamp Duties, which would come under the Schedules of this Bill, or providing for special stamps, he (Mr. Wilson) thought that all those provisions should now be imported into this Bill.

The amendments proposed by Sir Barnes Peacock for the omission of the

word "and," and the insertion of words "providing for the repeal of Section XXXVII Act X of 1859," were then severally put and carried.

MR. WILSON said, he had made enquiries at the Stamp Office, and consulted the Superintendent of Stamps as to a revision of the Scale of Stamps for Bonds prescribed by Article 8, Schedule A, and of the Scale for Conveyances prescribed by Article 19. The result was that he had brought with him two new Scales, which he begged to propose in lieu of the existing Scales. They approximated, as nearly as possible, to the *ad valorem* principle. The rates of Stamp Duty were somewhat lower in smaller values, and higher in higher values. The following were the Scales referred to:—

Scale for Bonds.

				Rs.	As.	P.
"If for any sum not exceeding			50 Rs...	0	4	0
Above	50 Rs. & not exceedg.		100 ,, ..	0	8	0
,,	100 ,,	,,	200 ,, ..	1	0	0
,,	200 ,,	,,	300 ,, ..	2	0	0
,,	300 ,,	,,	500 ,, ..	4	0	0
,,	500 ,,	,,	700 ,, ..	5	0	0
,,	700 ,,	,,	1,000 ,, ..	6	0	0
,,	1,000 ,,	,,	2,000 ,, ..	10	0	0
,,	2,000 ,,	,,	3,000 ,, ..	15	0	0
,,	3,000 ,,	,,	5,000 ,, ..	25	0	0
,,	5,000 ,,	,,	10,000 ,, ..	35	0	0
,,	10,000 ,,	,,	20,000 ,, ..	60	0	0
,,	20,000 ,,	,,	40,000 ,, ..	100	0	0
,,	40,000 ,,	,,	60,000 ,, ..	125	0	0
,,	60,000 ,,	,,	80,000 ,, ..	150	0	0
,,	80,000 ,,	,,	1,00,000 ,, ..	200	0	0
And for every further part of a lakh			..	100	0	0
And for every further full lakh			..	200	0	0

Scale for Conveyances.

				Rs.	As.	P.
"Above			100 Rs ..	1	0	0
Above	100 Rs. not exceedg.		200 ,, ..	2	0	0
,,	200 ,,	,,	400 ,, ..	4	0	0
,,	400 ,,	,,	800 ,, ..	8	0	0
,,	800 ,,	,,	1,200 ,, ..	12	0	0
,,	1,200 ,,	,,	2,000 ,, ..	20	0	0
,,	2,000 ,,	,,	3,000 ,, ..	30	0	0
,,	3,000 ,,	,,	4,000 ,, ..	40	0	0
,,	4,000 ,,	,,	5,000 ,, ..	50	0	0
,,	5,000 ,,	,,	7,500 ,, ..	75	0	0
,,	7,500 ,,	,,	10,000 ,, ..	100	0	0
,,	10,000 ,,	,,	20,000 ,, ..	150	0	0
,,	20,000 ,,	,,	40,000 ,, ..	200	0	0
,,	40,000 ,,	,,	60,000 ,, ..	300	0	0
,,	60,000 ,,	,,	80,000 ,, ..	400	0	0
,,	80,000 ,,	,,	1,00,000 ,, ..	500	0	0
And for every further ,, or part thereof 100 Rs."			50,000 ,, ..	200	0	0

The Scales were severally carried.

THE CHAIRMAN moved the introduction of the following Section in substitution for the Section of Mr. Currie's Act which had just been repealed:—

"All suits instituted under Act X of 1859 for the delivery of pottahs or for the determination of the rates of rent at which such pottahs are to be delivered; all suits for damages on account of the illegal exaction of rent, or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress; all complaints of excessive demand of rent, and all claims to abatement of rent; and all suits arising out of the exercise of the power of distraint conferred on zemindars and others by Sections CXII and CXIV of the said Act X of 1859, or out of any acts done under color of the exercise of the said power as provided under the said Act, shall be instituted on stamped paper of the value of eight annas if the amount claimed exceeds sixteen Rupees, or upon stamped paper of the value of four annas if the amount claimed be under sixteen Rupees; and all other suits or complaints under the said Act shall be subject to the same rules in regard to stamps as those provided by this Act for suits in the Courts of Civil Judicature."

He said that, previously to the passing of Mr. Currie's Act, summary claims for the recovery of arrears of rent preferred to Collectors were allowed to be written on paper bearing a stamp of one-fourth the value of that required for the institution of civil suits. But, previously to the passing of Mr. Currie's Act, a suit might have been instituted in a Civil Court from which Mr. Currie's Bill took away this power and transferred it to the Collector. It appeared to him therefore that the same exemption should not be continued, now that the power of instituting a regular suit had been removed.

MR. HARINGTON referred the Honorable and learned Chairman to Section VIII Regulation VIII. 1831, which he had apparently overlooked. It was upon the strength of the provision contained in that Section, that Mr. Currie introduced into his Bill the Section now under discussion. The Section ran as follows:—

"With a view to give additional encouragement to parties having claims to arrears of rent to prefer regular suits on account of the same, it is hereby declared that the plaint in all such regular suits, if under the existing Regulations they would have been cognizable as summary suits, may be written on paper bearing a stamp of one-fourth the prescribed value, provided, however, that this rule shall not be considered applicable to a suit

instituted with a view to set aside a previous summary decision, which suit shall be subject to the ordinary provisions for the payment of Stamp Duty."

The CHAIRMAN continued. The object of that Clause was to induce parties to go into the Civil Court. But Mr. Currie's Act had prevented parties from going to the Civil Court, and, inasmuch as the object did not now exist, the inducement should not be allowed to be continued. If a party instituted a suit before the Collector, that was not now a summary suit. Section XXXVII Act X of 1859 enacted that—

"In suits for the recovery of arrears of rent or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Courts. In all other suits the statement shall be written on paper bearing a stamp of the value of eight annas."

The smaller value was assumed to be four annas, because, under the late law, the smallest stamp that could be levied on the institution of a suit was one Rupee, if the amount or value of the suit was under 16 Rupees, and one-fourth of that was 4 annas. But Mr. Currie's Act imposed a stamp of 8 annas in all other suits than suits for the recovery of arrears of rent, or of money in the hands of an agent, which was very hard in cases of small amount. It was an increase of duty on the poor, and a diminution of duty on the rich.

Mr. HARINGTON begged to say that the rule in Mr. Currie's Act involved no diminution of duty in respect of the rich. The duty was still one-fourth as before.

The CHAIRMAN said, however that might be, at any rate it was an increase on the poor. It was unjust to that body of persons who were least able to pay. It was said that the Governor-General, in giving his assent to Mr. Currie's Bill, had declared his belief that it would confer a great practical benefit upon the agricultural population in Bengal. He (the Chairman) had no doubt that the Right Honorable the Governor-General did make that remark, but that remark had reference to the Act generally, and not to this Clause of the Act relating to stamps. Even if the remark did apply to this Clause, he (the Chairman) might just as well say that great benefit would result if there were no Stamp Duties whatever in any Civil proceedings. But the question was, whether it was just and proper to allow a man to institute a suit before a Collector at a smaller rate of Stamp Duty than was prescribed for the institution of a suit in a Civil Court. It was said that Government always protected land-owners in order to get its revenue. The same argument might be applied to all persons, for it might be said, "if you do not allow creditors to sue for their debts upon payment of a small amount of Stamp Duty, how will they be able to pay their Income Tax." Was any contract made with the zemindars that they should be able to sue for the recovery of their rents on more favorable terms than other persons? So far from any such contract having been made, it was long after the perpetual settlement that the exemption was granted. After enumerating the several descriptions of suits to which he proposed to extend the exemption, the Chairman said that he preferred the Section proposed by him as it now stood, but if Honorable Members objected to its including suits arising out of the exercise of the power of distraint conferred on zemindars and others by Mr. Currie's Act, he (the Chairman) had no objection to omit them. With these remarks, he begged to move the insertion of the Section which he had already read.

Mr. HARINGTON said, he quite agreed with the Honorable and learned Chairman as to the desirableness of abolishing judicial stamps, and if any Honorable Member would bring in a Bill for their abolition whenever the state of the public Finances rendered the measure practicable, he (Mr. Harington) would promise him his support. But, unfortunately, as was too well known, the financial condition of

the country precluded the possibility of such a measure being adopted at present, and it would probably be many years before the proposition could be entertained. But to revert to the question before the Committee. What he wished to urge upon Honorable Members was that they were not now dealing with a new matter, nor with a matter only a year old. As he had before shown, Mr. Currie's Act merely continued what had for a long time been the law. Why the exception was originally made in favor of the zemindar, he (Mr. Harington) was unable to say beyond what he had already stated. He could only repeat that zemindars had as long as he could remember been allowed to realize their rents by a less expensive process than other creditors. It might have been thirty years ago, or it might have been fifty years ago, that the exception in their favor had been introduced, and it had been continued up to the present time. The question now was whether any new and sufficient ground had been shown for a change. As far as he could see, no new ground had been urged. The zemindar, when he sued for rent, could scarcely be considered in the light of an ordinary creditor. He was obliged to pay his revenue on a certain date, and he must take steps to recover the amount due from the ryots before his own revenue became due. It was rarely that the zemindar had any capital to fall back upon, and if he did not pay his revenue, which he could only do in most cases after realizing his rent for the same period, he ran the risk of losing his estate. He could not therefore afford to wait like an ordinary creditor, but was compelled promptly to have recourse to legal means to enforce payment. After all, however, on whom would the extra duty now proposed to be taken generally fall? Undoubtedly, upon the tenant, for the returns would probably show that the number of cases which terminated in the landlord's favor was in the proportion of about 9 to 1. So that, as he had already said, although the extra duty would be paid in the first instance by the zemindar, ultimately they would be throwing it upon the tenant. This they could not prevent. He might be told that, if the tenant did not pay his rent when it became due, and his landlord was compelled in consequence to bring a suit against him to enforce payment, it would serve the tenant quite right if he had to pay the costs of the suit on being cast; but he believed he was right in saying that this was not what the Honorable and learned Chairman aimed at or intended. For these reasons he (Mr. Harington) begged to move, by way of amendment, that the following Section be substituted for that proposed by the Honorable and learned Chairman:—

"In suits for the recovery of arrears of rent or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other suits the statement shall be written on paper bearing a stamp of the value of eight annas."

MR. FORBES said, there was one point on which he wished to say a few words with reference to what had fallen from the Honorable Member for the North-Western Provinces. His Honorable friend had said that the zemindar was driven into Court for the purpose of recovering his rent, because he was obliged to pay his revenue at a fixed time. He (Mr. Forbes) would merely remind Honorable Members that not only was the zemindar thus forced into Court, but he was obliged also to bring all his suits against his tenants at one and the same time: an ordinary creditor could always bring his suits when it suited him, and with reference to his means of meeting the expenses of the Courts, but the zemindar had no such advantage, the revenue must be paid by a certain day, and by that day therefore his rents must be collected, and however numerous might be his debtors, and however great the sum necessary to carry on his suits, he had no choice but to expend that money in order to save his estate. The zemindar therefore could not be regarded as an ordinary creditor,

and it appeared to him to be not unreasonable to continue to him the advantages which he had under the law now under discussion.

Mr. SCONCE said, there was an important distinction to be drawn with regard to Mr. Currie's Bill It should be remembered that two classes of suits were made liable by Collectors, which before could only be tried by the Civil Courts on payment of the usual institution fees: one case was that of a claim for arrears of rent other than arrears of the current year, and the other was that for the delivery of a pottah and fixing or enhancing the rent of a tenant. Undoubtedly in both of these instances claims might be preferred under Act X of 1859 at a large sacrifice of the stamp fees formerly leviable. He should wish to add another exception to those proposed by the Honorable and learned Chairman. He alluded to Clause 6, Section XXIII of Act X of 1859, which embraced complaints made by tenants and others of having been illegally ejected from the lands held by them. Such complaints, he thought, should be heard on the terms of the present Act. Further, he considered it was desirable to provide for the continuance of the older rule relative to suits for arrears of rent, so that arrears of one year's standing should be sued for on stamps of quarter value, but if the period exceeded one year, then on paper of the full value.

Mr. WILSON said, he had listened with great attention to the observations which had fallen from the Honorable and learned Chairman and other Members. The subject of discussion was not one upon which he could lay claim to much information or, in point of fact, to any information beyond what he had acquired in the course of this debate. There were three questions which presented themselves for consideration:—*First*, whether we should consolidate in this Bill all the stamps chargeable under different Acts; of this he could have no doubt. *Secondly*, whether we should disturb a law passed last year, having reference to a particular body of men. *Thirdly*, whether we were in a position to sacrifice the revenue that might be derived from stamps in certain suits, in respect of which lower rates of Stamp Duty were allowed. It did not appear what the law was before. But as he understood the case, it was this. A law was passed last year relating to transactions between landlord and tenant, which recognised no distinction between landlord and tenant, whether as regards the amount of Stamp Duty payable or otherwise. The amendment before the Committee proposed to make a distinction in favor of the tenant. But it appeared to him (Mr. Wilson) that this difficulty would arise, namely, who was a tenant and who was a landlord? There were so many intermediate parties in some cases that it would be no easy matter to decide this question, and in many cases, he had no doubt, it was found that the same men were both landlords and tenants at the same time. The cases in question, that is, all suits for the recovery of rent, were cognizable by a species of Courts known by the name of Collectors' Courts. He (Mr. Wilson) saw no reason why suits instituted in such Courts should be charged a smaller Stamp Duty than suits instituted in other Courts; and if we now had to deal anew with the question, he should have no hesitation in adopting the general principle which the Honorable and learned Chairman had laid down. He (Mr. Wilson) thought that it was one thing to get rid of a bad system now existing, and another to extend that system. With the lack of information which he now felt, if he had the present case to consider for the first time, he should have no hesitation in supporting the Honorable and learned Chairman's view of the case. But he (Mr. Wilson) thought that, considering that Mr. Currie's Act had been in operation for the space barely of a year, it would be safer not to disturb that law without receiving reports from the local Executive Governments, and if it appeared that it was desirable to do so, these stamps might be assimilated. As the matter now stood, however, he could not run the risk of voting in favor of the

amendment proposed by the Honorable and learned Chairman. He (Mr. Wilson) hoped that the Honorable and learned Chairman would not press his motion.

After some further discussion, the Chairman's motion and Mr. Harington's amendment were severally withdrawn, on the understanding that the matter was to stand over until information was called for and received as to the practical working of Section XXXVII Act X of 1859; and it was also arranged that the Clerk of the Council should prepare a list, showing the several provisions in the existing enactments which affected the Stamp Laws, with a view to their being incorporated in the present Bill

MR. SCONCE said, a representation had been received from the Bank of Bengal as to whether Bank Notes came under the designation of Promissory Notes.

MR. WILSON said, the object of the representation was that Bank Notes, which were not now required to be stamped, should continue to be so exempted. He did not think that they need be stamped pending the passing of the Paper Currency measure. The present Bill relating to the Stamp Duties would come into operation on the 1st September next, and it appeared to him that the exemption of Bank Notes had better be included in the Bill.

MR SCONCE then moved that the words "except Bank Notes payable to bearer on demand," be inserted after the word "made," in the 7th line of Article 4 in Schedule A.

Agreed to

The consideration of the Bill was then postponed for a fortnight.

ABKAREE REVENUE (BENGAL).

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to amend Act XXI of 1856 (to consolidate and amend the Law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal)," the Council resolved itself into a Committee for the further consideration of the Bill.

Mr. Wilson

Section I provided as follows:—

"So much of Section VII Act XXI of 1856 as prescribes that the Duty leviable on spirits manufactured at distilleries worked according to the English method, for the imperial gallon of the strength of London Proof, shall be one Rupee—is hereby repealed. On and after the 21st January 1860, it shall be lawful for the Government to levy the Duty as aforesaid at the rate of 3 Rupees, and the Duty shall be rateably increased as the strength exceeds London Proof.

MR. SCONCE proposed amendments which were carried, and which made the Section run as follows:—

"Section IX Act XXI of 1856, so much of Section VII of the said Act as prescribes that the Duty leviable on spirits manufactured at distilleries worked according to the English method, for the imperial gallon of the strength of London Proof, shall be 1 Rupee, and so much of Section XV of the said Act as prohibits spirits under bond from being exported or shipped to any Port in India without payment of Duty, are hereby repealed. On and after the 21st January 1860, it shall be lawful for the Government to levy the Duty as aforesaid at the rate of 3 Rupees, and the Duty shall be rateably increased as the strength exceeds London Proof."

MR SCONCE then moved the introduction of the following Section after the above:—

"Spirits may be removed from any licensed distillery for exportation without payment of Duty, under such rules and restrictions as may be from time to time prescribed by the Board of Revenue, on the person removing them executing a bond with one or more sureties, to the Government in the form hereunto annexed, for the payment of the prescribed Duty upon such portion of the said spirits as may not be exported within four months from the date of the bond, or for such portion as may be exported to any other Port within British India Provided, however, that it shall be lawful for the Collector, with the sanction of the Commissioner, on sufficient cause shown, to extend the period allowed for the exportation of the spirits for a further term of four months. Provided also that spirits exported as aforesaid shall, if imported at any Port in the Territories subject to the Government of India, be charged with the Duty payable on account of spirits imported by sea under any Act for the time being in force."

Agreed to.

The remainder of the Bill was passed as it stood, and the Council having resumed its sitting the Bill was reported.

RELIGIOUS ENDOWMENTS.

Sir BARTLE FRERE moved that the Bill "to repeal Regulation XIX. 1810 of the Bengal Code, and Regulation VII. 1817 of the Madras Code" be referred to a Select Committee, consisting of Mr. Harington, Mr. Forbes, Mr. Sconce, and the Mover, with instructions to consider and report, under the 70th Standing Order, whether any special provision was required in the Act for the performance of duties which by the law now devolved on the officers of Government.

Agreed to.

INDIAN FINANCES.

Mr. WILSON said, he was desirous, at this stage of our proceedings, to make a few observations in reference to a question put to him last week by the Honorable Member for Bombay, in order that there might be no possible mistake in the matter. His Honorable friend had asked him whether the Government had it in contemplation to impose any other description of taxes than those referred to in his (Mr. Wilson's) Statement of the 18th February last; and his Honorable friend specified a considerable number of taxes, with respect to which he enquired if it was the intention of Government hereafter to impose them. To that question, he (Mr. Wilson) gave a most unqualified answer, and the effect of his reply was that the whole of the taxes to be imposed by the Government were contained in that Statement of the 18th of February. But that there might be no possible misconception of the measures of Government, he now begged to state that the Government might be under the necessity at no distant period of re-arranging and assimilating to some extent the different and conflicting rates of Duty now levied on Opium in the Eastern and Western parts of India, the effect of which would probably be an increase to the Government revenue. He did not consider that his Honorable friend's question bore reference to this matter. He (Mr. Wilson), therefore, when stating in reply to that question that it was not the intention of Government to impose any new taxes beyond those referred to in his Statement of the 18th of February, omitted to allude to this matter of the Opium Duty which, strictly speaking, was not a tax. The reason which he gave of the unwillingness of Government to impose any of the taxes specified by the Honorable Member for Bombay, was that the burden of taxation would have fallen almost exclusively on the Natives of India; and he was only desirous to guard the Government against any misunderstanding by explaining that any alteration of the Opium Duty would simply be an approximation of the Duty in one part of India to that in another.

He would take this opportunity of mentioning that a source of finance, which had been open to the Government for the last two years, of taking money on Treasury Bills, a sort of unfunded debt, had to-day been closed by a notification of Government published in the usual way.

Mr. LeGEYT said he was very much obliged to the Right Honorable Gentlemen for the further information which he had been kind enough to communicate to the Council. In asking his question, he (Mr LeGeyt) had not the Opium Revenue at all in his mind. The taxes which formed the subject matter of his question, and respecting which he had received several communications, were sources of revenue proposed by different persons in Bombay itself, and apprehensions were entertained that it might be the intention of Government to impose some of them in addition to those specially mentioned by him. The only doubt which rested on his mind after hearing the Right Honorable Gentleman's answer on Saturday last, was as to whether, by some misapprehension, the Tobacco Tax might not also have been included among the taxes which the Right Honorable Gentleman stated had been abandoned by the Government. But that could not be, as, on referring to the Financial statement, he found that it was expressly stated that it was the intention of the Government to increase the duty on Tobacco.

Mr. WILSON said, what he stated very distinctly was that all the taxes

which the Government had in contemplation to impose were comprised in his Financial statement.

LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

MR. FORBES moved that Sir Bartle Frere be requested to take the Bill "for the registration of Literary, Scientific, and Charitable Societies" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

CHITTAGONG DISTRICT.

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill "to remove certain tracts on the Eastern border of the Chittagong District from the jurisdiction of the tribunals established under the general Regulations and Acts" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

INDEMNITY.

MR. HARINTON moved that the Bill "to indemnify officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances" be referred to a Select Committee, consisting of the Vice-President, Mr. Sconce, and the Mover.

Agreed to.

The Council adjourned.

Saturday, May 5th, 1860.

PRESENT:

The Honorable the Chief Justice, *Vice-President*, in the Chair.

Honorable Sir H. B. E. Frere,
Right Honorable J. Wilson,
P. W. LeGeyt, Esq.,
H. B. Harington, Esq.,
H. Forbes, Esq.,
and
A. Sconce, Esq.

MESSAGES FROM THE GOVERNOR GENERAL.

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor General had assented to the Bill "relating to the emigration of Native Laborers to the British Colony of St. Vincent," the Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of Furruckabad," the Bill "to provide for the execution of process within the premises occupied by His Majesty the King of Oude," the Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on Boats, Rafts, and Floats passing through the Circular and Eastern Canals)," the Bill "to amend Act XIV of 1856," the Bill "to repeal Act V of 1858 (for the punishment of certain offenders who have escaped from Jail, and of persons who shall knowingly harbor such offenders), and to make certain provisions in lieu thereof," and the Bill "to continue in force for a further period of three months Act XXI of 1859, for providing for the exercise of certain powers by the Governor-General during his absence from his Council."

INCOME TAX.

THE CLERK presented a petition from landholders of Dacca, against the Bill for imposing Duties on profits arising from Property, Professions, Trades, and Offices.

MARRIAGES (CHURCH OF SCOTLAND).

MR. SCONCE presented the Report of the Select Committee on the Bill "relating to the solemnization of marriages in India by ordained Ministers of the Church of Scotland."

INCOME TAX.

MR. WILSON, in postponing the presentation of the Report of the Select Committee on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," said that the Select Committee had found it necessary to make much larger and more extensive alterations in the frame-work of the Bill than was expected, in order to give effect to the altered machinery of the Bill, which he had explained on the second reading, and the general effect of which would be

to bring the working of the Bill under the regular revenue authorities, and in harmony with the collection of other branches of revenue. To do this the more effectually, the Committee were of opinion that it would require considerably longer time than had been allowed for the consideration of the Bill, especially as it was above all things desirable to reduce the provisions of the Bill to the greatest possible simplicity, and he should therefore propose to fix this day three weeks for the presentation of the Select Committee's Report. For although the Government were desirous that no time should unnecessarily be lost in giving effect to measures the necessity for which was so urgent, yet they were much more anxious that it should be passed in the most perfect form attainable.

In reference to the Petition which had just been read at the table, and which at the proper time he would move should be printed, he might take this opportunity of saying that he had received a letter from the Rajah of Burdwan, stating his entire concurrence in the principle of the Bill. The Rajah, although he was the largest proprietor under the permanent Settlement, had expressed his entire willingness to contribute his share to the public necessities in the present emergency, and was desirous that it should be made known that though other holders under the permanent Settlement had claimed exemption, his (the Rajah's) opinion was that the tax was an equitable one between him and his fellow subjects.

MR. WILSON subsequently moved that the Clerk of the Council be requested to read the letter.

The Motion was carried, and the letter was read accordingly as follows :—

Rajbaree, Burdwan, 3rd May 1860.

TO THE RIGHT HONORABLE JAMES WILSON
Member of the Supreme Council in India.

SIR,—I trust that you will pardon the liberty I am taking in addressing you on the subject of the system of taxation which you are now proposing and in which I am deeply interested as the proprietor of the most extensive Zemindarees in Bengal.

The social ties by which I am surrounded, and the vast property in which I, and those dearest to me, are interested, make me keenly sensible of the obligations which India owes to the Government for crushing the late mutinies.

This sense of my obligations teaches me that it becomes an act of duty in me, as a subject of my Gracious Sovereign, not only to cheerfully acquiesce, but also to tender my humble support in aiding your new system, to relieve our unavoidable financial difficulties.

Permit me Sir, most respectfully to assure you that the immediate cause for this expression of my opinion is the attempt which has been made to oppose your admirable system of taxation—this opposition being founded upon the false assumption that it is a breach of the perpetual settlement.

No doubt that, at the time the settlement was made, it was considered as sufficient for the exigencies of those days, but I cannot find any thing in the terms of the settlement to convince me that the Zemindars of India have for ever been exempted from contributing to assist the Government when they incur unavoidable expenses in preserving property, life, the honor, and all that is dear to them of those very Zemindars.

Sir,—I, as the greatest Zemindar of Bengal, disclaim all such exemptions—I am willing to submit most cheerfully to your wise system of taxation which places this unavoidable impost equally on all classes. If you think that this declaration of mine, which is the result of mature consideration, will be any guide to my countrymen; if you think that the example thus set by the greatest proprietor of Zemindarees in Bengal, can induce his countrymen to believe that it is true policy to surrender a portion for the security of the whole—I place in your hands my adherence to that admirable system by which in my belief your memory will be endeared to India.

I have, &c.,

(Signed) MAHTAB CHAND BAHADOOR,
Maha Rajah of Burdwan.

LICENSING OF ARTS, TRADES, AND PROFESSIONS.

MR. WILSON also postponed the presentation of the Report of the Select Committee on the Bill "for the licensing of Arts, Trades, and Professions" for the same reasons as he had already explained with regard to the foregoing Bill.

PORT-DUES (BASSEIN).

MR. HARINGTON presented the Report of the Select Committee on the Bill "for the levy of Port-dues in the Port of Bassein."

ABKAREE REVENUE (BENGAL).

The Order of the Day being read for the third reading of the Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal)"—

MR. SCONCE said, before moving the third reading of this Bill, he was under the necessity of asking the Council to go again into Committee on the Bill with the view of reconsidering the amendment which was made last Saturday. The necessity for a change in the Bill, since it was reported on by the Select Committee, arose out of a representation from the Government of Bengal. As it was a short matter, he hoped the Council would allow him to offer a few remarks in explanation of it. By the present law, all spirits exported from Bengal to a Foreign Port, that is to any Port beyond the Continent of India, might be exported under drawback of the Excise Duty, or, as an alternative, it was provided by the existing law that spirits intended for Foreign exportation might be removed under bond from the place of distillation. These were the two forms according to which spirits intended for exportation might be exported. But this was the rule with respect to spirits intended for exportation to a Foreign Port only. There was a special provision as regarded spirits intended for exportation to an Indian Port. The object of this provision was to prohibit drawback in respect to spirits exported, it being a matter of little consequence whether the Duties leviable on spirits consumed in the Bengal Presidency, or in the Bombay Presidency, should be levied in one Presidency or the other. But a question lately arose in Bombay with regard to the manner in which the Excise Duty on Salt manufactured in that Presidency and exported to another should be credited in the accounts. It was decided upon that occasion that the Salt Duty was one on consumption, that the Excise was not leviable at the place of manufacture, and that the whole Duty on Salt thus exported should be credited to the Presidency in which the Salt was consumed. That being the case, the Bombay Government asked for the application of the same rule to spirits. It was a simple matter of account, and as such, in fact, did not seem to require any legislative action. But the Bengal Government, in conceding to the proposition of the Bombay Government, had suggested the removal of the restriction as regarded the payment of drawback on the exportation of spirits to Indian Ports. Of course spirits so exported would be subject to the ordinary Customs Duty at the Port where they would be consumed. At the suggestion of the Right Honorable Gentleman, a verbal alteration was introduced in the new Clause which was proposed by him last Saturday. The words of the new Section, as they now stood, were—

"Spirits may be exported from any licensed distillery for exportation without payment of duty, under such rules and restrictions as may be from time to time prescribed by the Board of Revenue on the person removing them executing a bond with one or more sureties to the Government in the form hereunto annexed for the payment of the prescribed duty upon such portion of the said spirits as may not be exported within four months from the date of the bond, or *for such portion as may be exported to any other Port within British India.*"

Therefore, as these words now stood, they might be taken to require the payment of Duty on the exportation of the spirits to an Indian Port, and would consequently not meet the purposes of the proposal of the Government. The bond would be taken upon such portion as might not be exported to any Port whatever within four months, or as might be exported to any Indian Port. Now if the Duty were required to be paid before the exportation of the spirits to a Port in India, the object of the Government would not be met. His (Mr. Sconce's) original proposal was to allow drawback in respect to spirits upon which Duty had already been paid, if exported by sea; and to allow the removal from the distillery of spirits intended for exportation without payment of Duty under a bond. In short, he proposed to assimilate the rule with respect to spirits intended for export-

ation to Indian Ports, to the rule relating to the exportation of spirits to Foreign Ports. One objection taken by the Revenue Board at Calcutta was that it might be a convenience to distillers or exporters not to be obliged to pay Duty in anticipation at the Port of distillation, that is, several months as it might be before the consumption of the spirits. He did not attach much importance to this objection, and he did not find that any objection had been raised by the distillers on that point. Another point was that already stated, namely that the Bengal Presidency should not be credited with the Excise Duty on spirits consumed in Bombay.

The motion was carried, and the Council resolved itself into a Committee upon the Bill.

MR. SCONCE proposed the rescission of the amendment carried last Saturday, with a view to the omission of the following words in Section II :—

"or for such portion as may be exported to any other Port within British India."

He repeated the grounds of his motion, and stated that the change made last week was not sufficiently expressive of the object which it was intended to meet. Under the Bill as now amended, payment of Duty was necessary, whereas the principle of his (Mr. Sconce's) amendment was quite different, namely, that if spirits were intended to be exported to any Port, a bond should be taken from the exporter, so as to secure the Government from any loss of revenue. He (Mr. Sconce) thought that the simplest way of disposing of the case was by entirely assimilating the exportation of spirits to Indian Ports to the exportation of spirits to Foreign Ports. If spirits were exported from Bengal to Bombay, they would, on arrival at Bombay, be liable to the ordinary Customs Duty.

MR. WILSON said, his Honorable friend had stated that he wished to frame this Bill in accordance with the recommendation of the Revenue Authorities. He (Mr. Wilson) thought he would be able by a very few words to show that the Bill as now amended fully carried out the object contemplated. He would call attention to the state of the law as it already stood. Spirits manufactured in India and exported to a Foreign Port were allowed a drawback of the Excise Duty already paid upon them. The policy of that was obvious. If we were to compete with foreign countries, it was obviously absurd to attempt to impose a Duty. The present law provided not only that they should be allowed drawback, but that spirits might be removed to the port of exportation under bond without payment of Duty. Now what the Bombay Government had contended for, and the Bengal Government recommended was this, not that the drawback should be allowed upon spirits upon which the Duty had already been paid, but that Rum might be permitted to be exported to Bombay under bond before payment of Duty. This was precisely what the Bill, as amended last week, effected. It repealed that part of the existing law which prohibited the exportation of spirits under bond to an Indian Port. It then provided that—

"Spirits may be removed from any licensed distillery for exportation without payment of Duty, under such rules and restrictions as may be from time to time prescribed by the Board of Revenue, on the person removing them executing a bond with one or more sureties to the Government in the form hereunto annexed, for the payment of the prescribed Duty upon such portion of the said spirits as may not be exported within four months from the date of the bond, or for such portion as may be exported to any other Port within British India."

That is, the bond was to be given upon the removal of spirits from a distillery for exportation, for the payment of Duty upon such portion, as might not be exported within four months, or for such portion as might be exported to any Port in India; and that was, in point of fact, all that the Government of Bengal required. We allowed the spirit to be exported upon the exporter giving a bond that the Duty would be paid, and upon the Collector being satisfied the bond would be discharged. He (Mr. Wilson) did not know what his Honorable friend required further. If we were

to allow drawbacks of Duty already paid, with regard to spirits removed from one Indian Port to another, we would only be confusing accounts, and the system of drawbacks, as it was, was attended with some risk. If it were stated that the object was to credit Bombay and not Bengal with the Duty, that might be done by a mere transfer in the books, as was done with respect to some Rum exported from Bengal and consumed in Bombay.

THE CHAIRMAN said, he concurred, with the Right Honorable gentleman, that the Bill, as already amended sufficiently provided for the object contemplated by the Government of Bengal. The only difficulty which he (the Chairman) felt was this that he saw no Clause in the Bill which provided for the discharge of the bond on the Collector being satisfied of the payment of the Duty. Without some provision to that effect, the exporter might be liable to pay both the Excise and Customs Duties.

After some discussion as to the rates of Excise Duty ruling in the Bengal and Bombay Presidencies, Mr. Sconce's motion was withdrawn, and amendments were severally proposed by the Chairman and Mr. Wilson and carried, which made the Section run as follows :—

"Spirits may be removed from any licensed distillery for exportation without payment of Duty, under such rules and restrictions as may be from time to time prescribed by the Board of Revenue, on the person removing them executing a bond with one or more sureties to the Government in the form hereunto annexed, for the payment of the prescribed Duty upon such portion of the said spirits as may not be exported within four months from the date of the bond, or upon such portion as may be exported to any other Port within British India not being a free Port, proof of the landing whereof, and the payment of the Duty whereon, shall not be furnished to the satisfaction of the Board of Revenue within six months from the date of such bond. Provided, however, that it shall be lawful for the Collector, with the sanction of the Commissioner, on sufficient cause shown, to extend the period allowed for the exportation of the spirits, or as the case may be, for the production of such proof as aforesaid for a further term of four months. Provided also that spirits exported as aforesaid shall, if imported to any Port in the territories subject to the Government of India, be charged with the Duty payable on account of spirits imported by Sea, under any Act for the time being in force."

The Council having resumed its sitting, the Bill was reported with amendments.

INCOME TAX.

MR. WILSON moved that the petition from the landholders of Dacca, this day presented to the Council, be printed.

Agreed to.

PENAL RECOGNIZANCES.

MR. SCONCE said, he wished to ascertain from the Honorable and learned Vice-President the practice with regard to Committees which had been discharged What he wanted to know particularly was when the Select Committee on a Bill was discharged, whether it was competent to the Council to re-appoint a Committee. He put this question with reference to the Bill for the better prevention of offences against the public tranquillity, which had been referred to a Select Committee sometime ago. The Council would remember that last year a Bill had been introduced by the late Member for Bengal for regulating the establishment of markets. Now he (Mr. Sconce) was unwilling to proceed with that Bill, and it seemed to him that the object sought to be accomplished by the Market Bill would be better attained by the adoption of a general law for the preservation of the peace. The Committee, however, which had been appointed to consider the public tranquillity Bill, was lately discharged, and he (Mr. Sconce) now wished to know whether he could take up the Bill at the stage at which it was left by the late Committee, or whether it was necessary for him to introduce the measure afresh, as if it were an entirely new matter.

THE VICE-PRESIDENT said there was nothing in the Standing Orders to prevent a Bill, the Select

Committee on which might have been discharged, being referred to a fresh Select Committee. The reason why the Select Committee on the Mochulkas or Penal Recognizances Bill was discharged was that it was understood that the substance of the provisons of that Bill had been introduced into the Criminal Procedure Bill, which had already been reported on by the Select Committee. If the Honorable Member, however, thought any good would result from the appointment of a new Committee, it was quite competent to him to propose the adoption of that course. He (the Vice-President) did not think that the mere fact of the Select Committee having been discharged, implied the abandonment of the Bill altogether.

MR. SCONCE then moved that the Bill "for the better prevention of offences against the public tranquillity, and to amend the law regarding the taking of bonds for keeping the peace," be again referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, and the Mover.

Agreed to.

The Council adjourned.

Saturday, May 12, 1860.

PRESENT :

The Honorable the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. B. Harington, Esq.,
Right Hon'ble James Wilson,	H. Forbes, Esq., and
P. W. LeGeyt, Esq.,	A Sconce, Esq.

PORT-DUES AND SIR JAMSETJEE JEJEEBHOY'S BARONETCY.

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XXII of 1855 (for the Regulation of Ports and Port-dues), and Act VII of 1858 (for the levy of Port-dues at Ports within the Presidency of Fort St. George);" and the Bill "for settling Promissory Notes of the Government of India, producing an annual income of one lakh of Rupees, and a Mansion House and Hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet, lately conferred on him and the heirs male of his body by Her present Majesty Queen Victoria, and for other purposes connected therewith."

INCOME TAX.

THE CLERK, in presenting a Petition signed by Mr. H. Nelson, the Sheriff of Madras, and Chairman of a Meeting of the inhabitants held in that city, against the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," reported that the Petition did not conclude with a distinct prayer.

MR. WILSON said that he understood from the President and the Clerk at the table, that it was contrary to the Standing Rules of the Council to receive Petitions which did not conclude with a prayer, and that it was not customary for such Petitions to be printed. But for his own part, and as far as he was concerned, he would deeply regret if a document of this importance, proceeding from so highly respectable and influential a body of Her Majesty's subjects, should be rejected, merely upon a formal ground of that character. The Petition raised questions of the highest importance, and which might well engage the most earnest attention of the Council, and especially of the Committee to which the Income Tax Bill was now referred. He (Mr. Wilson) therefore hoped that Honorable Members would consent to overlook this informality, and would support him in the Motion that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

STAMP DUTIES.

THE CLERK reported that he had received a communication from the Home

Department, forwarding a correspondence with the Bombay Government on the subject of registering unstamped or insufficiently stamped documents sent to the Post Office for the purpose of being stamped

MR. SCONCE said, it would be sufficient to consider this communication when the Council went into Committee upon the Bill "to consolidate and amend the law relating to Stamp Duties." In the meanwhile he should move that the communication lie on the table.

Agreed to.

ADMINISTRATOR GENERAL.

MR. FORBES presented the Report of the Select Committee on the Bill "to amend Act VIII of 1855 (relating to the office and duties of Administrator General.")

ABKAREE REVENUE (BENGAL.)

MR. SCONCE said, as he had one or two amendments to propose in the Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal)," he begged to move that the Council again resolve itself into a Committee upon the Bill.

Agreed to.

MR. SCONCE said, he was now prepared to present to the Council a Schedule, containing the form of Bond to be annexed to the Act, which he thought would meet the several points which had been introduced into the Bill.

MR. HARINGTON said, before the Schedule which had just been presented to the Council by the Honorable Member for Bengal was read, he wished to take advantage of the re-commitment of the Bill to call the attention of the Council again to that part of Section II which was under discussion at the last meeting of the Committee. The part of the Section to which he alluded had these words:—

"or upon such portion as may be exported to any other Port within British India, not being a free Port, proof of the landing whereof and of the payment of the Duty whereon shall not be furnished to the satisfaction of the Board of Revenue within six months from the date of such bond."

It certainly seemed to him that this provision was quite unnecessary, and that, if it were retained, the effect could only be greatly to complicate matters, and often to cause very serious delay in the disposal of the cases to which the provision would apply, without any real benefit accruing therefrom. He took it that the duty of the authorities in Bengal under this Section of the Bill would be to see that spirits manufactured for exportation, and not for home use, upon which exemption from Duty was claimed upon that ground, were exported within the time allowed, whether that time was four months or whether it was eight months. If the exportation took place within the limited period, the penalty bond required to be entered into in respect to spirits intended to be sent out of the country without the previous payment of Duty, would cease and determine as a matter of course. On the other hand, if the exportation should be delayed beyond the period allowed, it would be the duty of the Collector of Customs to enforce the terms of the bond. When once exportation had taken place, he submitted that the responsibility of the Bengal authorities and all obligation on their part in respect to the exaction of the Duty, should be considered as at an end, though, in the event of the spirits being afterwards landed at some Port within the jurisdiction of those authorities, they would be bound to levy the prescribed Duty upon the spirits so landed. In cases in which the exported spirits were landed at some other port in the Territories subject to the Government of India, it would be the business of the Collector of Customs at that Port to levy the Duty with which the spirits so imported were chargeable under any Act for the time being in force. With the proper discharge of this duty, the Bengal authorities ought not to have any concern, nor could any responsibility fairly attach to them in the matter. As just noticed

the responsibility would then rest with the Officers in the Customs Department of the Port at which the spirits were imported, and it would be their duty to see that the Government was not defrauded of its dues. They had their own laws against smuggling, and he could not refrain from remarking that, if those laws were considered sufficient for the prevention of smuggling as regarded all other articles, and indeed as regarded spirits also, when imported from any place not in India, he could see no sufficient reason for any special enactment being passed in respect to spirits imported from a Port in Bengal at any other Indian Port. The complications alluded to by him might arise out of the loss of the vessel in which the spirits were exported, from their consumption on the voyage, from leakage, or from many other causes, which would require to be enquired into, should the words which he had quoted be retained, and no end of correspondence would ensue. For these reasons he ventured to suggest that the words in question should be struck out of the Section, and he begged to make a motion to that effect The proviso at the end of the Section would remain, and, he should hope, would prove sufficient to protect the interests of Government.

MR. SCONCE said, he should not have thought it desirable to raise the question which had been considered and disposed of this day week, but as his Honorable friend, the Member for the North-Western Provinces, in re-opening the question, had considered it in one point of view, he (Mr. Sconce) wished to mention another point, which it seemed to him very material that the Council should take into its serious consideration. This was that, taking the Bill as it now stood, it would after all be but a half and half measure. The objection made by the Bombay Government arose from the simple consideration that the Excise Duty on spirits should be credited to the Port of consumption. The remission of Duty as regards Bengal might be provided for in two ways, either by allowing spirits to be taken from the distilleries without Duty but under bond, or by the payment of a drawback in case the Duty were paid at the distillery. The second Section in the Bill now before the Council provided only for the first of those cases; and so it would happen that, on the export of spirits to any other Indian Port, for which Duty had been paid here, the spirits would have to be imported at that other Indian Port, Bombay for example, and being entered there for consumption, the claim would again arise, as it had now arisen, for a credit on account of Duty levied here on spirits consumed at Bombay. Clearly, the Bill in its present shape only met half of the cases that might occur, and would not settle the question as it might be settled. On the other hand, if spirits had paid Duty, and drawback were allowed on exportation, the Duty would not be imposed at the Port of exportation, but at the Port of consumption. If you allowed no drawback, you must still meet the claim of any other Presidency to benefit by the Duty paid here, and so the work we now did was but half done. The matter was important, but, as he said before, since the Council had already come to a decision upon it, he should not have reverted to the subject, had not the opportunity been afforded to him by the motion of the Honorable Member for the North-Western Provinces. It appeared to him (Mr. Sconce) that the principle of allowing a drawback did not at all differ from that of allowing spirits to be exported under a bond without payment of Duty The admitted object to be attained being to permit spirits distilled here to be charged with Duty in the Presidency where they were consumed, it was absolutely immaterial whether we remitted the Duty upon exportation, or allowed exportation under Bond without payment of Duty. For these reasons, as he had already mentioned, the Bill, as it now stood, was a half and half measure, and he confessed he was disposed to support the motion of the Honorable Member for the North-Western Provinces.

MR. WILSON said, it was quite evident that, when the Indian law was altered, so as to make trade free in all

its ports, there should be no question of Duties, whether export or import, as between such ports, but that, in order to secure this freedom, the same arrangements should exist in respect to dutiable goods as did between one town and another. The latter was an essential condition to the former. By allowing spirits to be removed in bond on a coasting trader, as we had already done, he quite agreed with the Honorable Member for Bengal that the Bill, so far as it had thus gone, infringed a most important principle. We had permitted goods to be exported from one Indian Port to another, which would require to pay duty at the latter. If that were the case, he would ask the Honorable Member for the North-Western Provinces, if his amendment were carried, how much farther the Bill would infringe that principle of law. The Honorable Member for Bengal was no doubt right in saying that, if we allowed a departure from that principle at all, we must allow it in full. But he would ask his Honorable friend to consider whether it was right for us, when we had throughout India the same Exchequer and the same law, to allow drawback of the Duty which had been paid in one place, in order that the goods might be removed Duty free, and to again pay the Duty in the place to which the goods were sent, only for the purpose of enabling the Duty on these grounds to be credited to the place of consumption. What could be the object of such a measure, or what possible benefit would result from it? On the contrary, there were great many inconveniences to which it would give rise, as it would increase the risk of fraud and of smuggling. If Duty were paid at one Port and subsequently required to be credited to another, that could easily be done by a transfer in the accounts.

His Honorable friend was quite right so far as his remarks applied to the export of spirits to foreign Ports. No doubt, if spirits were removed from a distillery for the purpose of exportation, they should be exempted from Duty, in which case it would be sufficient to require the execution of a bond for the payment of Duty upon such portion as might be exported. But suppose they had been exported to an Indian Port, then his Honorable friend said that it might be taken to be the same thing. His Honorable friend had overlooked, however, one or two points. The trade from Port to Port was now perfectly free, and under different regulations from the foreign trade. If a foreign ship entered an Indian Port, then it was known that the whole cargo was subject to Duty; but if a ship entered from another Port in India, then *primâ facie* the cargo was all free, and, therefore, if part of that cargo consisted of goods upon which a heavy Duty was payable, it was absolutely necessary that there ought to be some security in the shape of a bond that that Duty would be payable, otherwise no security whatever would exist for such being done. Unless you had some document to show, there would be no means of distinguishing the spirit shipped for exportation from the other cargo of the vessel. The amendment, however, must not be taken to be confined to the exportation of spirits from Calcutta to Bombay, for which purpose, no doubt, the same class of vessels were used as for the exportation of spirits to foreign Ports. But there was a number of small craft engaged in the coasting trade in the Soonderbunds; and if spirits which had not paid the Duty could be removed in them, then, without a security that the Duty would be paid, there would be a great risk of smuggling. But, on the other hand, he would ask what would be the hardship in retaining the words proposed to be omitted by the Honorable Member for the North-Western Provinces. The present law prohibited the exportation of spirits from one Indian Port to another without the payment of Duty. Why did it do so? Because it said that there should be no question of Duty between one Indian Port and another. Hitherto, the law imposed the payment of Duty before exportation. Now all that the distillers asked was that they should not be compelled to pay a heavy Duty here on an article that had

to be shipped to a great distance, but to be permitted to ship it under bond, that the Duty might be paid at the place of consumption; and to this the Council had consented by the Bill as it stood. In England we allowed goods to be removed before payment of Duty from one place to another, but we never allowed them to do so except under bond. The Bill, as it now stood, was precisely in accordance with the law in England. Irish and Scotch spirits were removed to England in bond, and on proof of the spirits and of payment of Duty thereon, the bond taken from the shipper was discharged. He (Mr Wilson) thought his Honorable friend would admit that there was a great difference between coasting ships and foreign ships. His Honorable friend had adverted to two or three inconveniences resulting from the terms of the Bill as it now stood, namely the loss of the ship, consumption of spirits on the voyage, and leakage. All these inconveniences could easily be provided against, and would be nothing compared with the risk we would run of smuggling. In England we allowed exportation under bond by railways as well as by coasting ships, but under the strictest regulations to prevent fraud, and, in the course of time, it might be found needful to allow similar privileges here. With regard to leakage there was a certain allowance made, and if the leakage exceeded that allowance, the Duty would be required to be paid upon the excess. In the case of loss of ship, on proof of the fact, Duty would not be charged at all, but the bond would be discharged. As to consumption on voyage, as coasting ships were not allowed the use of Duty free stores, it was evident that, if you allowed spirits to be exported without bond, ships going to Bombay and taking spirits might consume as much as they required, and nothing would prevent their larding a portion on the coast. He could assure his Honorable friend that this was a subject to which he (Mr. Wilson) had given his attention for several years, and if his Honorable friend only knew the difficulties with which it was beset, he would not, he (Mr. Wilson) was sure, press his motion. He (Mr. Wilson) for one, could not assent to it, for, if he did, he was certain that the result would be injurious to the interests of the revenue, and, what was of as much importance, to those of the fair and honest trader.

MR. HARINGTON said, his objection was directed to the Section as at present worded. He had not touched upon the general question of drawbacks, and had given no opinion as to whether a system of drawbacks was desirable or not. What he had thought proper to notice were the complications which he feared the part of the Section to which he had alluded, would produce, and the difficulties that would often be experienced in disposing of the disputes which might be expected to arise under the Section as now framed. It certainly seemed to him that it was advisable, if possible, to avoid these complications and difficulties, and he thought that this could only be effectually done by placing spirits exported from Bengal for subsequent importation at some other Indian Port upon the same footing as spirits exported to any foreign or to any free Port. He could not see any difficulty as regarded the coasting trade, because he apprehended that, wherever spirits or other articles could be landed on the coast, there would be a Custom House Officer to prevent smuggling, and to see that no goods liable to Duty were landed on which the Duty had not been paid, and, as he had already said, he could not understand why the laws, which were considered sufficient to prevent smuggling as regarded all other articles, should not also be sufficient as regarded spirits. He had no wish, however, after what had fallen from the Right Honorable Member (Mr. Wilson) to press his objections, and with the permission of the Committee he would withdraw his Motion.

The Motion was accordingly by leave withdrawn

MR. SCONCE proposed the addition of the following Section after Section 11:—

"All the provisions of the last preceding Section shall apply to Rum shrub, cordials, and

other liquors prepared as described in Section XVI Act XXI of 1856.

THE CHAIRMAN thought that some alteration was necessary in the proposed Section, to make it consistent with Section XVI Act XXI of 1856, under which the Duty was charged only on the quantity of spirits used in the preparation of Rum shrub and other liquors.

After some further discussion the Motion was withdrawn.

MR. SCONCE said, he would now call the attention of the Council to a matter of some importance. He was glad that the postponement of the present Bill had given him an opportunity of bringing it forward. He proposed to move the introduction of some additional Clauses, of which he had given notice. Within the last week, Mr. Lazarus, a gentleman of this city, had communicated with him on the subject of exempting from Duty spirits used for manufactures and arts. Mr. Lazarus had directed his attention to the English Act on the subject, and had represented to him that the principle adopted in England should be introduced into this country, especially as the Duty on spirits was about to be increased.

Mr. Sconce here read from a report submitted to the Chairman of the Indian Revenue in England, by Professors Graham, Hofman, and Redwood, on the practicability of supplying for commercial purposes a mixed spirit, rendered by the mixture unsuitable as a beverage. The purposes to which this spirit might be applied were various. It was principally used for French Polish, lacquer, and other varnishes, and it was found that the employment of spirit of wine in varnishes was not impaired by the mixture of wood naptha, which had been recommended for that purpose. The following was the paragraph which he quoted, and which recapitulated the results of the enquiry :—

"It has appeared that means exist by which spirit of wine produced in the usual way may be rendered unfit for human consumption as a beverage, without materially impairing it for the greater number of the more valuable purposes in the arts to which spirit is usually applied. To spirit of wine of not less strength than corresponds to density 0·830, it is proposed to make an addition of 10 per cent. of purified wood naptha, otherwise known as wood-spirit, pyroxylic spirit, and methylic spirit, and to issue this mixed spirit for consumption, Duty free, under the name of methylated spirit. It has been shown that methylated spirit resists any process for its purification, the removal of the substance added to the spirit of wine being not only difficult, but, to all appearance, impossible, and further that no danger is to be apprehended of the methylated spirit being ever compounded so as to make it palatable. The privilege of using such mixed spirit should be open to all branches of the arts and manufactures without restriction, but it may be expedient to prevent the sale of the methylated spirit in licensed public houses, or the preparation and sale of it by the licensed rectifiers of spirits. The wood naphtha employed in mixing should be supplied by the Inland revenue, in order to ensure uniformity in its quality, and that substance be mixed with the spirit at the distillery under Government inspection. The permission to use pure spirit of wine for any purpose of manufacture under a bond of security, or in presence of a Revenue Officer, may reasonably be withheld till the methylated spirit now proposed has had a fair trial. It may be found safe to reduce eventually the proportion of the mixing ingredient to 5 per cent., or even a smaller proportion, although it has been recommended to begin with the larger proportion of 10 per cent. The present supply of would naphtha is amply sufficient for the application contemplated of that substance for mixing with the spirit used in the arts and manufactures of the country."

Mr. Sconce concluded by moving the introduction of the first of the Clauses which he had proposed, somewhat corresponding to the terms of the law in England. The Clause was as follows :—

"It shall be lawful for the Board of Revenue to permit spirit of wine to be removed from any distillery without the payment of Duty, for the purpose of being employed in any manufacture or art, subject to such rules as the local Government shall approve for the mixture of the spirit, before removal, with wood naphtha or methylic alcohol, or with some other substance in such manner as to render the spirit of wine so mixed unfit for use as a beverage, and incapable of being converted to that purpose."

MR. WILSON said, he ought to be the last person in the world to object to the present amendment, for it was at his own instance that the amendment in the law in England, to which his Honorable friend had referred, was

carried. If we were in a position to follow the example of England, nothing would be more desirable than to do so, but unfortunately we were placed in different circumstances. In England we had then an overflowing revenue. It was always our object to relieve trade in every possible way, half of our surplus revenue being devoted for that purpose. Another reason, which however did not seem to exist here, was this, that in the neighboring countries, such as France, Holland, and Germany, spirits were subject to a small and nominal Duty. At several manufactories in Birmingham and other places, spirits were used to a very large extent for melting gum employed in the manufacture of papier mache, and an enormous variety of other articles. In order to place those establishments on an equal footing with their foreign rivals, spirits for such purposes were exempted from Duty, but no doubt at a great sacrifice of revenue, of which he was unable at present to give anything like an approximate idea. Now he was not prepared to say that, if we had an overflowing revenue, and no intention of imposing new taxes, he would not support and gladly accede to the Honorable Member's proposition A similar representation had been made to him some short time ago, and he (Mr. Wilson) was obliged to assign the same reasons for declining to make the exemption. He had not had no opportunity of communicating with the Honorable Member for Bengal on the subject.

Another objection to the measure was that in England scientific arrangements for the purpose of testing these mixtures were so complete, that it was very difficult to practise any fraud on the revenue, whereas he did not know if the same means were now available in India. The Board of Inland Revenue in England had a very efficient chemical establishment, and scarcely anything could escape detection.

If his Honorable friend wished to press his amendment, he (Mr. Wilson) would suggest to him to postpone the consideration of the question till next Saturday, to enable him to make enquiries on the subject. But he would put it to his Honorable friend whether, when we were about to impose new taxes, and taxes affecting the poor and lower classes, it was the proper or fitting time for us to give up Duties, however wise it might be on principle to do so

MR. SCONCE said, he was very much disposed to press his motion, inasmuch as the use of spirit of wine for the purpose of varnish seemed to him to involve quite a different principle from that involved by the sale of spirits used as a beverage. The object of imposing an additional Duty under the present Bill was to raise the Excise Revenue derivable from the consumption of spirituous liquors; and it seemed to him that it would be foreign to that purpose to increase so largely the Duty upon spirits used in manufactures. However, as the Right Honorable Gentleman wished it, he (Mr. Sconce) had no objection to postpone the consideration of the question till Saturday next.

The consideration of the Section was accordingly postponed.

MR. SCONCE then moved the insertion of the following Schedule :—

FORM OF BOND.

"Know all men by these presents, That we are jointly and severally held and firmly bound unto the Secretary of State for India in the sum of Company's Rupees , to be paid to the said Secretary of State for India; for which payment well and truly to be made, we jointly and severally bind ourselves, and each of us binds himself and each and every one of our respective heirs, administrators, and representatives, by these presents. Sealed with our Seal. Dated this day of

"Whereas the above bounden are justly and truly indebted to the Secretary of State for India in the sum of Company's Rupees , being the amount of Duty payable to the Secretary of State for India, at the rate of three Rupees per imperial gallon, London proof, for gallons of manufactured at , which the said ha been allowed to remove thence for exportation by sea, without having paid the amount of such Duty. Now the condition of this obligation is such that, if the above bounden , his or their heirs, executors, administrators, or representatives, or some or one of them, do and shall, at the expiration of four calendar months from the date of this obligation, well and truly pay, or cause to be paid to the said Secretary of State for India, Duty at the rate of three Rupees per Imperial

gallon of proof spirit, for all or any portion of the above mentioned , which shall not have been exported by sea, or which shall have been passed for local consumption, or if the above bounden his or their heirs, executors, administrators, or representatives, or one of them, do and shall, within four months from the date of this obligation, export the said by sea to some port in British India not being a free port, and within six months from the date of this obligation afford proof to the satisfaction of the Board of Revenue that the same has been landed at such Port (not being a free Port) and that Duty thereon, according to the provisions of this Act, has at such Port been paid thereon, then this obligation shall be void, otherwise it shall remain in full force and virtue. Sealed and delivered in the presence of

The Motion was carried, and the Council resumed its sitting.

STAMP DUTIES.

The Order of the Day for the adjourned Committee of the whole Council on the Bill "to consolidate and amend the law relating to Stamp Duties" was postponed till Saturday next, on the Motion of Mr. Wilson.

MARRIAGES (CHURCH OF SCOTLAND).

MR. SCONCE moved that the Council resolve itself into a Committee upon the Bill "relating to the solemnization of Marriages in India, by ordained Ministers of the Church of Scotland."

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

PORT-DUES (BASSEIN).

MR. HARINGTON moved that the Council resolve itself into a Committee upon the Bill "for the levy of Port-Dues in the Port of Bassein."

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

INDIAN FINANCES.

MR. SCONCE said, he wished to bring to the notice of the Council a matter upon which it seemed to him it was desirable that the Council should have some information. The first Return which he proposed to move for, related to the Customs Revenue realised in Calcutta, during the year subsequent to the alteration of the Duties in March 1859, as compared with the Duties realised in preceding years, and was in the following terms:—

"A statement of the goods imported and exported by sea through the Calcutta Custom House, for the years 1856-57 1858-59, and 1859-60, together with the quantity or value of each article, the rate of Duty leviable, and the Duty levied thereon for each of the three years"

It was not his wish in any way to ask for a statement, the preparation of which would involve much trouble, or would entail much cost in printing, and he would be glad if the Returns were furnished in the most convenient form. He wished to have also a similar statement with respect to other Ports in India at which Customs Duties were levied.

Another statement which he proposed to call for was—

"A statement of the salt delivered or entered for consumption during the years 1858-59 and 1859-60, in each of the Presidencies and Lieutenant-Governorships, showing also the Duty levied thereon, and distinguishing the charges incidental to the manufacture of any portion of the total deliveries that was manufactured in India."

The last Return which he desired to see was—

"A statement of the average retail price of salt, per maund of 80 tolahs to the seer, in the month of April of the years 1859 and 1860, at the principal town or station of the several Districts subject to each Presidency and Lieutenant-Governorship."

Mr. Sconce observed that his object in calling for these Returns was with a view to discover the real effect on the revenue of the late increase in the Import and Export Duties, and also to see whether the late manifest tendency to an increase in the Duty on salt had materially raised the price of salt to the consumer, and in any

degree restricted the consumption of that article.

With the permission of the Council, he begged to propose that the President in Council be requested to furnish this Council with the following Returns :—

"A Statement of the goods imported and exported by sea, through the Calcutta Custom House, for the years 1856-57, 1858-59, and 1859-60, together with the quantity or value of each article ; the rate of Duty leviable, and the Duty levied thereon for each of the three years.

"Similar Statements with respect to other ports in India at which Customs Duties are levied.

"A statement of the salt delivered or entered for consumption during the years 1858-59 and 1859-60, in each of the Presidencies and Lieutenant-Governorships, showing also the Duty levied thereon, and distinguishing the charges incidental to the manufacture of any portion of the total deliveries that was manufactured in India.

"A statement of the average retail price of salt per maund of 80 tolahs to the seer in the month of April of the years 1859 and 1860 at the principal town or station of the several districts subject to each Presidency and Lieutenant-Governorship."

MR. WILSON said, there would be no objection whatever to furnishing the Returns asked for. As to the average retail price of salt, however, he did not know how the Government could furnish such a Return, as he did not think that the retail price was fixed by Government.

MR. SCONCE said, he was satisfied that the average retail prices of salt were easily ascertainable in Bengal, and no difficulty would be found in preparing the Returns.

MR. FORBES said, there would be no difficulty in the Southern part of India to furnish the information in question, as the retail price of salt and other commodities was always kept by the Collectors.

The Motion was put and carried.

MR. SCONCE then moved that Mr. Wilson be requested to take the above Message to the President in Council.

Agreed to.

PORT-DUES (BASSEIN).

MR. HARINGTON gave notice that he would on Saturday next move the third reading of the Bill "for the levy of Port Dues in the Port of Bassein."

MARRIAGES (CHURCH OF SCOTLAND).

MR. SCONCE gave notice that he would on the same day move the third reading of the Bill "relating to the solemnization of Marriages in India by ordained Ministers of the Church of Scotland."

ADMINISTRATOR GENERAL.

MR. FORBES gave notice that he would on the same day move for a Committee of the whole Council on the Bill "to amend Act VIII of 1855, relating to the office and duties of Administrator General."

The Council adjourned.

Saturday, May 19, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Sir H. B. E. Frere,	H. B. Harington, Esq.,
Right Hon. J. Wilson,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

INCOME TAX.

THE CLERK presented a Petition of Radkanath Chuckerbutty and others, against the Bill "for imposing Duties on profits arising from property, professions, trades, and offices."

MR. WILSON moved that the Petition be printed.

Agreed to.

MARRIAGES (CHURCH OF SCOTLAND).

MR. SCONCE moved that the Bill "relating to the solemnization of Marriages in India by ordained Ministers of the Church of Scotland" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

PORT-DUES (BASSEIN.)

MR HARINGTON moved that the Bill "for the levy of Port-dues in the Port of Bassein" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

ABKAREE REVENUE (BENGAL.)

The Order of the Day being read for the adjourned re-committal of the Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. SCONCE said, he was anxious to satisfy the Council of the expediency of adopting the proposition which he submitted to the Council last Saturday as an amendment in the Bill. His object was to permit spirit of wine to be methylated, so that it might be used without duty for the purposes of manufacture and art. Now the first matter which he would submit was that the duty, which had been raised from 1 Rupee to 3 Rupees, was merely intended to apply to the consumption of spirituous liquors, and it seemed to him that it was not desirable to impose the same duty on a preparation of spirits which was not consumed as an article of excise, but which, on the contrary, was used for purposes of manufacture and art. As he had said, the duty had been raised from 1 to 3 Rupees, that is, 200 per cent. had been added to the duty. It therefore seemed to him that, by imposing so heavy a duty on spirit of wine used for varnishes, we should be interfering with those manufactures and arts in which varnishes were used. But there were several other purposes, besides those of varnishes, in which spirit of wine might be employed. It was employed for medicinal purposes, for example, as a solvent in various chemical preparations. It was used also for burning, as well as in the sick room and other domestic purposes; and thus, as spirit of wine was distilled at 56 or 60 per cent. above proof, while common spirits would pay a duty of 3 Rupees a gallon, for every gallon of spirit of wine used for the common but important objects he had referred to, 5 Rupees duty would be now taken. Was it reasonable—would the Council consent—to allow so heavy a duty being imposed on spirits used for the purposes referred to by him, when it was about to increase the duty for purposes of excise?

Another matter which he asked the Council to consider was this. People had two ways of justifying the imposition of excise duty. Some defended it merely as a source of revenue, others again justified it on the ground of morality, as checking consumption, in like manner as was done with respect to opium. But surely no one desired to check the consumption of spirits used for manufactures and arts, for medicinal purposes, and for every-day domestic convenience.

Another ground he would urge in support of this exemption was that spirit of wine, as Honorable Members were doubtless aware, was largely used in preserving specimens of Natural History. A single jar employed for such a purpose might often contain a gallon of spirits, and certainly he did not think it wise or judicious to take so heavy a duty as 5 Rupees on a jar of spirits used for preserving snakes, fishes, or other objects of a similar nature.

But there was, it seemed to him, a still stronger reason to be adduced. The uneasy ghost of protection having been driven from his old abode in England, like the ancient tempter, might now be attempting stealthily to find its way within the limits of this simple-minded realm. There were two kinds of protection. The one kind had reference to manufactures and products of one's own country, and the other to manufactures and products of other countries in which we felt interested. Both were equally bad. The question however which he wished to put was this. He was told that a varnish called methylated finish, which was prepared from methylated alcohol, was an article of commerce now procurable in

England. Well, supposing this methylated finish to be imported to India from England; it was no longer on the footing of a potable spirit, and on its arrival in India it would be charged an *ad valorem* duty of 10 per cent. Now the excise duty on spirit of wine manufactured in the country would be nearly 5 Rupees a gallon, and the prime cost of the spirit to the manufacturer here, exclusive of the duty, amounted to about 2 Rupees 12 annas a gallon; so that upon the prime cost of the article alone, a duty of nearly 100 per cent. would be levied.

Observe, then, that while the English article would be imported at a duty not exceeding 10 per cent. of the value therof, a similar preparation manufactured in this country from spirit of wine would bear a duty of about 100 per cent. on its prime cost and necessarily the latter could not stand so unequal a competition.

He did not know that he had any other remark to offer, except in reference to a suggestion which fell from the Right Honorable Gentleman last Saturday as to the difficulty of distinguishing between what were and what were not methylated spirits. It was well known, he believed, that the Revenue Authorities would have no difficulty in engaging the services of scientific chemists; and it seemed to him that prepared methylated alcohol might be imported from England and used in the distilleries under securities quite sufficient to protect the public Revenue.

With these remarks he begged to move the insertion of the following new Section after Section II:—

"It shall be lawful for the Board of Revenue to permit spirit of wine to be removed from any distillery without the payment of duty, for the purpose of being employed in any manufacture or art, subject to such rules as the local Government shall approve for the mixture of the spirit, before removal, with wood naphtha, or methylic alcohol, or with some other substance, in such manner as to render the spirit of wine so mixed unfit for use as a beverage and incapable of being converted to that purpose."

MR. WILSON said, he hoped his Honorable friend would not persevere in his present Motion. He (Mr. Wilson) had stated last Saturday that he would make enquiries from the Revenue Authorities whether, if it was desirable to introduce into this country the system of spirit mixtures, it was safe at present to do so. He had accordingly made enquiries and had been informed that no machinery whatever was available for the purpose in this country. He had explained to the Council last week, that in England scientific arrangements were made for testing these mixtures, and that the Board of Inland Revenue employed a very efficient chemical establishment for the purpose of detecting any frauds which might be attempted to be practised on the Revenue. If for other reasons we were disposed to grant the concession, that was a sufficient reason why we should not do so. He submitted to the Council that the circumstances under which, as he had stated last Saturday, the exemption had been made in England, and that too at his own instance, did not at all exist here. As stated by his Honorable friend, the duty was a duty on the manufacture for which the spirit was employed, and undoubtedly the duty on the spirit of wine was added to the cost of the varnish. But what he (Mr. Wilson) would submit was that the duty was simply a tax on the consumption of the article. He did not think, when we were about to impose new taxes, some of which might be considered more doubtful in their incidence, that it would be consistent to give up this duty, and that too at a great risk to a much larger Revenue.

His Honorable friend had referred to various other purposes besides those of manufactures and arts for which spirits were used. He had said that they were used for preserving snakes and other reptiles and fishes and for chemical compounds. All this was no doubt very true, but he would ask his Honorable friend if there was no other cheaper article which might not be used for the same purpose, such as wood naphtha, which was extensively used in England for such purposes and paid no duty.

But if it were not so, he would further ask, if there was any thing in the cost of spirits that would possibly induce the Council to endanger a great duty in order to effect an infinitesimal saving in the price of such compounds to the extent of one or two pies for the dram.

His Honorable friend had said that the duty should not be imposed for the purpose of protection to the manufactures of other countries as against the products of this country. He (Mr. Wilson) would suggest a very simple and easy remedy. We had only to raise the import duty on the varnish imported in order to equalize the imported and the home made articles. That was what had been done in England, namely, by means of a countervailing duty.

Then his Honorable friend had adverted to the duty being given up on the ground of its being a raw material, and as such interfering with the manufactures and arts. But he (Mr. Wilson) would ask if, upon such a plea, it was possible to begin with spirit of wine, when we left untouched the duties on Iron, Copper, and metals of all kinds, Timber, and other articles, the very foundation of all industries. For thirty years before the removal of the duty on spirit of wine used for the purposes of manufacture and art in England, we had repealed the duties upon the great bulk of all the important raw materials of trade.

He hoped, therefore, that for the reasons which he (Mr. Wilson) had given, his Honorable friend would not press his amendment.

Mr. SCONCE said, he was not satisfied as to the expediency of withdrawing his amendment. In the first place, he was not satisfied that the Revenue Authorities had not the means of detecting fraud with respect to such mixtures. He spoke generally and without having made an enquiry on the subject. But he was not satisfied that the objection taken by the Revenue Authorities was well founded. Where there was a will there was a way, and he could not doubt that by putting their shoulders to the wheel, his proposal could be carried out. An Abkarree Officer was now constantly in the habit of attending distilleries, and it seemed to him that this Officer should find no difficulty in superintending the mixture of methylated spirits.

He still entertained a strong opinion as to the expediency of adopting his proposed amendment. Nor could he see that the suggestion which he had made in the matter of protection was sufficiently met by the proposal of the Right Honorable Gentleman to raise the Import Duty on methylated finish. It might be that he (Mr. Sconce) had no objection to the raising of the import duty on that or any other article of commerce. But that he thought was a matter for ulterior consideration. What he now objected to was, by anticipation as it were, taking one article out of the class of articles subject to an *ad valorem* duty of 10 per cent. and making it an exception to the general rule.

The Motion was then put and negatived, and the Council having resumed its sitting, the Bill was reported.

STAMP DUTIES.

Mr. WILSON moved that the Order of the Day for the adjourned Committee of the whole Council on the Bill "to consolidate and amend the law relating to Stamp Duties" be postponed till Saturday next.

Agreed to.

ADMINISTRATOR GENERAL.

Mr. FORBES moved that the Council resolve itself into a Committee on the Bill "to amend Act VIII of 1855 (relating to the office and duties of Administrator General.)"

Agreed to.

Section I (empowering the Administrator General in certain cases to secure and distribute the estate and effects of soldiers) was passed as it stood.

Section II provided as follows:—

"If within months no person claiming to be entitled to a principal share of the effects of the deceased, shall obtain a certificate from the Administrator General under Section XLIII of the said Act, or

letters of administration to the estate and effects of the deceased, the Administrator General, when required so to do by any creditor against the estate, shall apply for, and the Supreme Court may in such cases grant to him, letters of administration to the said estate and effects, or if he omit to take such proceedings, such creditor may apply for, and the Supreme Court may in such cases grant to such creditor, letters of administration to the said estate and effects."

THE CHAIRMAN moved several amendments, which were carried and which made the Section run as follows :—

"If in cases falling within Section XLIII of Act VIII of 1855, no person claiming to be entitled to a principal share of the effects of the deceased shall, within three months, obtain a certificate from the Administrator General under the said Section of the said Act, or letters of administration to the estate and effects of the deceased, the Administrator General may administer the estate without letters of administration, in the same manner as if such letters of administration had been granted to him; and if he shall neglect or refuse to take upon himself the administration of the estate and effects, he shall, upon the application of a creditor, and upon being satisfied of his title, grant a certificate in the same manner as if such creditor were entitled to a principal share of the effects of the deceased, and such certificate shall have the same effect as a certificate granted under the provisions of Section XLIII of the said Act, and shall be subject to all the provisions of the said Act which are applicable to such certificate. Provided that the Administrator General may, before granting such certificate, if he think fit, require the creditor to give reasonable security for the due administration of the estate and effects of the deceased."

Section III provided as follows :—

"Whenever any person holding the office of Administrator General shall obtain leave of absence, it shall be lawful for the Government to appoint some person to officiate as Administrator General, and such person, while so officiating, shall be subject to the same conditions and bound by the same responsibilities as the Adminstrator General by any law now in force or that may hereafter be enacted."

THE CHAIRMAN moved the addition of the following words to the Section :—

"And he shall be deemed to be Administrator General for the time being under Act VIII of 1855, and shall be liable to give security under Section VII of the said Act, in like manner as if he had been appointed Administrator General."

The Motion was carried, and the Section, as amended, then passed.

The Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported.

ABKAREE REVENUE.

MR. SCONCE moved that the Standing Orders be suspended to enable him to move the third reading of the Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal.")

MR. FORBES seconded the Motion, which was then agreed to.

MR. SCONCE moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill to the President in Council, in order that it might be submitted to the Governor General for his assent.

Agreed to.

MARRIAGES (CHURCH OF SCOTLAND).

MR. SCONCE moved that Sir Bartle Frere be requested to take the Bill "relating to the solemnization of Marriages in India by ordained Ministers of the Church of Scotland" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

PORT-DUES (BASSEIN).

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill for the levy of Port-dues in the Port of Bassein to the President in Council, in order that it might be submitted to the Governor General for his assent.

Agreed to.

The Council adjourned.

Saturday, May 26, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

His Excellency the Commander-in-Chief, Hon'ble Sir H. B. E. Frere, Right Hon. J. Wilson, H. B. Harington, Esq., H. Forbes, Esq., and A. Sconce, Esq.

MESSAGES FROM THE GOVERNOR-GENERAL.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "for the registration of Literary, Scientific, and Charitable Societies," the Bill "to remove certain tracts on the Eastern border of the Chittagong District from the jurisdiction of the tribunals established under the general Regulations and Acts," the Bill "relating to the solemnization of Marriages in India by ordained Ministers of the Church of Scotland," the Bill "for the levy of Port-dues in the Port of Bassein," and the Bill "to amend Act XXI of 1856 (to consolidate and amend the law relating to the Abkaree Revenue in the Presidency of Fort William in Bengal)."

INCOME-TAX; AND LICENSING OF ARTS, TRADES, AND PROFESSIONS.

THE CLERK presented to the Council the following Petitions:—

A Petition of Land-holders and Ryots of Eastern Bengal against the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

A Petition of the British Indian Association against the same Bill.

A Petition of the British Indian Association concerning the Bill "for the licensing of Arts, Trades, and Professions."

A Petition of Native Proprietors of permanently settled estates in Bengal, Behar, and Orissa against the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

A Petition of Native Inhabitants of Madras against the above Bill, and the Bill "for the licensing of Arts, Trades, and Professions."

And a Petition of the Seebpore Branch of the British Indian Association and other Native Inhabitants of Bengal against the same Bills.

MR. WILSON moved that the above Petitions be printed.

Agreed to.

The CLERK reported to the Council that he had received a communication from the Home Department forwarding a correspondence with the Madras Government including the Reports of the Board of Revenue at that Presidency upon the same Bills.

MR. WILSON moved that the above communication be printed.

Agreed to.

The Order of the Day being read for the presentation of the Report of the Select Committee on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices"—

MR. WILSON rose and said:—

MR. PRESIDENT:—Sir, in presenting the Report of the Select Committee which was appointed to consider this important Bill, I should not be doing justice to my own feelings if I did not take the earliest opportunity to express the deep obligations, which not only the Government, but the public at large, owe to my colleagues, who formed this Committee, for the unremitting attention, zeal, practical ability, and knowledge which they have brought to the task. The Bill, as I now present it to the Council, is, in all its essential parts, as a measure of Finance, unchanged. But great changes, and I may add immense improvements, have taken place with the view of simplifying the machinery of the Bill, and of bringing it more into harmony, not only with the theory, but still more with the practice of the existing revenue system of India. These important changes will, I believe, merit most, if not all, of the criticisms which have been made upon the Bill in this respect, and will enable the existing revenue authorities in the Mofussil to exercise, in regard to

the revenue raised under this Bill, the same functions which they now exercise in regard to other branches of revenue. By this means we shall have no conflicting authority, and the just influence which the Revenue Officers now possess from their large experience will be exerted in the introduction of this measure. Of course special arrangements will be necessary in order to place at the disposal of those Officers whatever assistance may be required. The Committee have also made in the provisions of the Bill several important modifications to meet special cases, to which I will allude in greater detail before I resume my seat.

I have said, Sir, that the Bill, as I now present it, is, in all its essential parts, the same as it was when it left this Council. When I had the honor to propose this measure on the 18th of February, I stated that I did so with the full concurrence of the Noble Earl, the Governor-General, and of every Member of the Supreme Government. Let me again assure the Council, if indeed it be necessary, that the decision at which we then arrived was not taken lightly, nor without the most searching and rigid investigation into the condition of the Finances of the Empire, and the deepest conviction that nothing less than we proposed could save the country from the impending bankruptcy with which it had been for some time threatened. We were fully conscious not only of the deep responsibility, but also of the great difficulties which we incurred by the proposals which we made. But, nevertheless, we had a duty to perform which we could not evade. Since then we have had ample time and opportunity to re-consider every point, and to receive from the proper responsible authorities revised statements as to the actual and prospective condition of our finances, and, Sir, it is my duty to say in the most emphatic and unqualified manner, that all such further investigation has tended only the more to convince us of the imperative necessity of persevering with these measures. As it will be my duty to show, before I sit down, the reasons which impelled us to propose this tax on the 18th of July, are now even stronger for persevering with it. Sir, during the last week, since the arrival of the Governor-General, the Government have had an opportunity of reviewing all that has taken place, of re-considering the condition of our finances in every possible aspect, with the advantage of information brought down to the latest time, and after the most anxious and pains-taking examination and consideration, I am authorised by the Governor-General to express to the Council his fullest concurrence with the other Members of the Government, as to the imperative necessity of persevering with this measure in all its integrity. It was not decided upon without the most careful consideration and conviction of its necessity, and it cannot be abandoned while that necessity remains, as it does, undiminished. The Committee have also had these considerations and circumstances under their notice, as materially affecting some of the changes which have been urged in the petitions presented to this Council, and calculated to affect the productiveness of the tax. And if there was not absolute unanimity, yet I think I may say that whatever difference of opinion existed was confined to a single point to which I may have occasion hereafter to allude. In referring to the petitions which have been presented against this measure, there is a peculiarity which must have struck every Member of the Council. For upwards of two months after the announcement of the measure, with the single exception of a petition from the Clerks in the public offices, asking for a graduated scale, there was not a single petition, either from Natives or Europeans, against it. On the contrary, up to a certain time, there existed throughout India, and among all classes, greater unanimity than was probably ever experienced in respect to an important measure of public policy, and that was the more remarkable when it is considered that the measure was one which taxed all classes, and, with regard to some of them, for the first

time. Amongst Europeans and in the European Press, I may say there was absolute unanimity, and if there were any symptom of opposition among the Natives, it was seen or heard in the most indistinct manner. No one was more surprised than I was myself at this exhibition of unanimity, and almost of satisfaction, but the cause of it soon became plain and easily understood. The public had a strong conviction of the gravity of the crisis that had for a long time been undermining the credit of the State, and threatening our finances with irreparable disorder and confusion. Deeply impressed with this feeling, they were as deeply convinced of the necessity of the vigorous measures proposed by the Government—and with a loyalty and public spirit which did honor to the Indian Community, they were prepared cheerfully, almost joyfully, to submit to any personal sacrifices to extricate the State from its difficulties. As has been remarked in England, it was perhaps the first and only time when it could be said that a heavy scheme of taxation was received with something approaching to enthusiasm. Upon the announcement, even the public funds, though for the first time subjected to a tax of *four per cent.*, rose in price. Now no one will pretend that all this happened in consequence of the imposition of a tax:—no, Sir, I believe it was to be attributed solely to the fact that people generally were convinced that at last they knew the worst, and that vigorous measures would be taken to secure an adequate remedy, and whatever that was, they were willing to submit to it, rather than to go on groping in the dark as they hitherto had done. And if, Sir, after a particular time a marked change has taken place in the opinions of a portion of the European population, but perhaps even more of a portion of the European Press, I am not disposed to attribute it to mere caprice, and much less to a diminished feeling of loyalty or willingness to bear whatever burdens the necessities of the State may render necessary. If a change has taken place, it has been in consequence of an impression; *first*, that the financial difficulties of the State, which had been the object of so much anxiety at home and in India, were after all, if not altogether, a myth, yet had been greatly exaggerated, and that the real deficit to be provided for had been greatly exaggerated; *second*, that no means had yet been taken materially to reduce the enormous military expenditure which had risen to such a height during the mutinies—and that that expenditure being still near a maximum, was susceptible of such reduction as would, within a reasonable period, obliterate the deficiency existing, even though as great as had been represented; and, *thirdly*, as a consequence, that the taxes which the Government proposed were not necessary. I will not stop here to enquire upon what insufficient grounds these impressions obtained even a partial footing in the minds of a portion of the Community. But of the fact, I think, there can be no doubt. Nor can there be any more doubt that the change of opinion which took place was attributable to this cause. And assuming that any one, upon grounds however untenable and however inconsistent with probability and facts, had, nevertheless, upon what he deemed competent authority, obtained such an impression, it would indeed be difficult to blame such an one for a change of views. Taxes at the best are most unwelcome, and however much men may be able to reconcile themselves to them when necessary, nothing but opposition can be expected to them if a belief prevails that they are not necessary. Sir, I believe this to be the true theory of the remarkable phenomenon which we have witnessed in India since the 18th of February, and which at first sight has worn so much the appearance of fickleness and caprice. So far as I am concerned, I am not disposed to find fault with it, convinced as I am that time will rectify all errors and justify all the Government have proposed.

But, Sir, I might ask, were there no *primâ facie* reasons well known to the whole world which might have raised, to say the least, a strong presumption against the impressions which thus obtained? Had it not become an

ascertained and recorded fact in the proceedings of Parliament, that the deficits in the Indian Exchequer in the year ending the 30th of April, last year, was no less than £13,393,000, and that the deficiency in the last year was between nine and ten millions? Was it then a thing so incredible, even upon the suspicion that the deficit of the coming year should stand at the reduced sum of £6,500,000, that the accuracy of the public department responsible for accounts should be doubted? No new sources of income, except the Customs Bill of last year, and an increase in the Duty on Malwa Opium, had become available. How then had the ascertained deficiency of 1858-59 of £13,393,000 been brought down, first, to £9,290,000 in the first year, and to an estimated deficiency of £6,500,000 in the year to come? And that, too, in the face of the fact that since 1858-59 the interest of the debt has increased by nearly £1,500,000. I would submit then that, independently of the authoritative statement made by the Supreme Government upon the responsibility of the departments charged with such accounts, there were *primâ facie* grounds for believing that that estimate was at least not exaggerated. But, Sir, there is one of the petitions which has been presented against this measure, in respect to which I would wish to say a few words; *first*, because it is the only petition of the same kind that has proceeded from a general community, including, I suppose, Europeans, and presided over by a European gentleman of some distinction; and, *secondly*, because, I believe, that the remarks I have made in relation to the change of opinion which has taken place, and the cause of it, are peculiarly applicable to that community, and to those who composed the meeting. I allude to the petition from the inhabitants of Madras. But here I hope the Council will permit me to say one word by way of personal explanation. I observe by the papers of that place that I have most unintentionally given umbrage by some words which I used in relation to the Governor, and the notice which I took of his published Minute. I certainly never intended to say anything which could be considered discourteous to that gentleman, and still less to slight any opinions or views which he might bring under the notice of the Government of India, and I may appeal to those who then heard me, whether anything I did say could bear such a construction. In the very brief allusion to the appearance of those documents in our public papers, I certainly used the expression that "but for their publication and the notice, slight as it may be, which thereon seems due to this Council, I should not have referred to their existence." But I never intended by that, nor can I think the words convey the meaning, that otherwise the representations from the Madras Government would not have received from the Supreme Government all that attention they are justly entitled to. It was our duty to consider them as confidential communications in the Supreme Council as the Government of India, but not to discuss them in the Legislative Council. And as the best proof that the representations made from Madras had not been neglected by the Supreme Government, I may state that, before we even knew of their publication, a reply had been sent to the Madras Government, stating the manner in which the Governor-General of India thought it best to deal with the Minutes in question, and at the time I spoke, a despatch embracing almost every point in that Minute had been addressed to the Secretary of State. I hope this explanation will be sufficient to convince the people of Madras that there was no desire, nor intention whatever, to treat lightly the representations proceeding from their Government. But why have I arrived at the conclusion that the change of opinion in Madras has proceeded from the causes I have named? Why, because I find that the first and pressing reason stated in support of the petition is that "the present magnitude of the Army in India is equally dangerous on political and financial grounds, and that an adequate reduction in the military expenditure of the Empire

will be productive of means wherewith to absorb a large portion of the present deficit." I have no doubt that this resolution was framed before my statement in this Council, in reply to a question put by my Honorable friend opposite (Mr. Harington), was known, in which I showed the great extent to which the Army had been so rapidly reduced. I am aware that complaints have been made that I was not sufficiently full in my explanation upon this point as well as upon the fact of the great increase in our civil expenditure in my statement of the 18th of February. I know it is said that, if I had stated as much in detail then as I have done since, much misconception would have been avoided. Sir, I very much regret if my want of fullness of explanation has misled any one; I am only afraid that those who were condemned to hear me thought my address long enough. But what was necessarily defective in my statement, I endeavored to make up by the returns which were presented at the same time; and I have always been ready to afford any further explanation which any Member of this Council desired. But if, then, I am right in concluding that the change of opinion which is manifested by the petitions against this measure has taken its rise from the causes I have named, I would claim the indulgence of the Council for a short time, while I make a few observations upon these three heads.

First, as to the amount of the deficiency; *second*, as to the extent of our military reductions already taken place; *third*, as to the possibility of effecting such further reductions as can be relied upon to meet such deficiency.

In the first place, then, I hold in my hand a carefully revised estimate of the income and expenditure of the current year. You, Sir, will recollect with how much caution and reserve I spoke of the estimates on which my calculations of the 18th February proceeded. But I am bound to say to the credit of the Departments which framed it, that, with allowance for changes which have since taken place, the estimate made up now varies but little from that of the 18th of February. But let me explain how these estimates are framed. The Accountants General of the several Presidencies in communication with the different local Accountants and with the local Governments, and having the advantage of the actual knowledge of receipts and disbursements possessed by no one else, transmit from time to time to the Accountant General of the Government of India their estimates under every head; he furnishes this to the Financial Department, where they are aggregated and worked up into a whole. These estimates are, therefore, the result of the experience and knowledge of officers all over India, who alone have reliable information on the subject brought together into one focus. Estimates framed in this manner have generally and in ordinary times proved as correct as estimates can be expected to be. But whether with regard to military expenditure or any other, when local Governments have had recourse to any other means of framing these estimates, they have, I believe, always been found to be incorrect, and of this we have had some remarkable proofs of late. What I then wish to be understood to say is this, whatever estimates the Government of India accept or act upon, are those exclusively which are made up in the manner described by the Finance Department based upon the returns of the Accountants all over India, who are the only responsible Officers for that purpose; all other estimates we must reject as proceeding from those whose knowledge and means of judging cannot be equal to those of the officers I have named. The estimate which was furnished to me on the 18th February showed a deficit of £6,500,000. The revised estimates which I now hold in my hand, though varying but little in the great bulk of detail, yet show a considerably worse result. On the 18th of February the deficit stood at £6,500,000. But since that, as one of the measures of my Budget, the new Customs Bill has come into operation, and credit is taken in the receipts of this revised estimate for the increase consequent

thereon. Credit is also taken for some increase of receipts under the new Abkaree Bill, to which the consent of the Governor-General has been given this day. Credit has also been taken for some increase from the new Stamp Bill which will come into operation on the 1st of September. The amount of new taxes taken credit for now, and which have been provided for since February, is £267,000. On the other hand, when I spoke in February, the amount of military reductions which had then been ascertained by all the Accountants, over and above those which affected the expenditure of 1859-60, was £1,740,000. I then stated that we had great confidence in adding, in the course of the year, considerably, to that sum. The estimate revised up to this time shows a further reduction of £697,345, making a total reduction even upon last year of £2,437,345 We feel confident in being able still further to increase this reduction during the present year, at least to the sum I stated upon a former occasion. These items together ought to have reduced our deficit as it stood on the 18th of February to the sum of £5,600,000, that is, by increased income from new sources on the one hand, and diminished expenditure on the other. In place of this, however, the deficit now stands according to this revised estimate at £6,348,019. This increase has arisen chiefly from a cause to which I pointedly directed the attention of the Council on the 18th of February. You will remember that I called your attention to the precarious character of our Opium Revenue; deeply impressed as I was with the danger attached to that source of income, I scarcely expected to see my apprehensions so quickly assume a real and practical shape. In the estimate before me those apprehensions have, in three months, acquired a reality in the shape of loss of revenue to the extent of £576,727. A few weeks ago it became known, as the deliveries of Opium were made for the season, that the yield was defective, and the department computing their sales for the Financial year 1860-61, have reduced their receipts by £301,727. But at the same time another fact became apparent. Notwithstanding the rise in price to the ryot from Rs. 3-4 to 3-8 per seer of last year, it became evident that that was not enough to induce cultivators to go on, as many gave notice that they would not again take advances. It is only a fortnight since we received from the Lieutenant-Governor of Bengal a despatch, giving cover to a Report of the Board of Revenue upon this subject. His Honor pointed out that in Bengal, during the last three or four years, all the leading crops, wheat, rice, potatoes, and sugar, had increased in price by 70 to 100 per cent., and he urged the necessity of a further rise in the price paid for Opium, in order that it might maintain its ground against those other articles. The Government of India have therefore sanctioned a further rise to Rs. 4 the seer, which, we hope, will have the necessary effect, and secure us against a further decline in the cultivation. But this increase entails a further cost of £275,727 in the price of this year's computed crop. So that while our receipts fall off by £301,727, the cost increases by £275,000, making the net loss upon Opium £576,727. This sum, together with a small increase on the cost of collection of revenue, and an increase in the estimate for the new Madras Police, chiefly make up the difference. Therefore, though the deficit exhibited by this revised estimate, is actually £151,981 less than that of February, yet relatively, it is, from the causes I have explained, somewhat worse.

The next point then to which I would refer is the extent to which Military reductions have already taken place. Here is an account which has been made up to the present week, showing the amount of the Military Expenditure for each year up to the present time, divided under two heads, first, the General Army under the Commander-in-Chief, and, second,

what may be termed the local Military. It is as follows :—

MILITARY

	Military including Stores *a*	Local Military *b*	Total as shown in the Parliamentary Return.
	£	£	£
1856-57	10,947,643	544,262	11,491,905
1857-58	15,107,184	462,741	15,569,925
1858-59	20,581,972	498,976	21,080,948
Estimate .. 1859-60	17,048,877	662,788	17,711,665
Estimate .. 1860-61, Feb ..	15,308,877	662,788	15,971,665
Estimate .. 1860-61, May ..	14,662,232	614,088	15,276,320

This table shows that since 1858-59, that is in little more than a year, reductions have been effected to the extent of £5,803,680, and in a very short time this sum will exceed £6,000,000. But let it be borne in mind that it is after effecting all these reductions, after reducing the cost of the General Military from £20,581,972 to £14,662,232, that still we have to grapple with a deficiency of £6,348,109.

Sir, we have no doubt, if we are but blessed with a continuance of peace, that we may reduce this expenditure, still, by a very considerable sum. But it must be borne in mind that the greater the reductions which have been made, the greater must be the difficulty of pressing them further. And I am confident that there is no merchant in India, nor any European, nor any loyal Native, who, however much he may desire to see our expenditure reduced, would wish to see the country unduly denuded of troops at a time when the political atmosphere outside of India is so threatening. Nevertheless, I believe, I may state with some confidence that in each of the three Presidencies very considerable further retrenchments will be made, so as to affect the finance of next year, that is 1861-62. But great as they may be, even if as great as each Presidency has promised to effect, in addition to what has been done, they will still leave the deficit of the present year almost untouched, and by far the larger portion of it in the next year. I am sure then that I have said enough to show that if I were to encourage you to rely upon reductions of expenditure alone, for meeting this serious deficiency in our finances, I should only be deceiving and misleading you. And I think that, whatever others may persuade themselves, no Member of this Council will indulge the belief that the actual crisis which we have to confront is less severe than has been represented, that the deficiency in our finances is less than the responsible departments have shown it, or will be disposed to think that the Government has been either indifferent to reductions of military expenditure, or unsuccessful in accomplishing them, or, lastly, will be disposed to delude themselves into a belief that such a deficit can be met by reduction alone. Sir, the Government would indeed be glad if it could indulge in so comforting a doctrine as the last I have indicated I regret that facts will not permit us. We must refuse wilfully to deceive ourselves or to be the means of deceiving others. Finance, unlike many other branches of politics involving moral and social interests, has an absolute touch-stone by which it must, and that at a time

a. Including charges of the Local Infantry Battalions, Poona Irregular Horse, Southern Mahratta Irregular Horse, and a portion of the Sind Military charges, the Commissariat Ordnance, and other miscellaneous charges appertaining to which have been estimated.

b. The details of the Local Military charges are given in the accompanying Statement.

23rd *May* 1860.

Mr. Wilson

always near at hand, be brought to actual test. People may dispute for ever as to the abstract merits or success of particular laws affecting the interests of society, but there is no disputing when a treasury becomes empty, or is only replenished by continued loans one after another at increasing rates of interest.

But, Sir, we are not insensible to the necessity of using every effort to reduce expenditure to the lowest. On the 18th of February, I stated the determination of the Government to introduce the English system of annual Budgets and estimates for every branch of the service, and to supplant the system of special grants so limited by a concurrent audit as the year proceeds, and by a final audit at the close of the year. Steps have already been taken to accomplish these objects. Even the estimates for the present year have been all referred back to the local Governments to be again examined and revised. It remains to be seen what may be the result. But though it may be small in the present year while yet the system is new, yet I do hope for important results in future years in checking that rapid increase of establishments which for some years past has taken place. Sir, our attention has been so much of late confined to Military matters and Military expenditure that it has not perhaps been sufficiently attracted to the growth of our Civil expenditure. I have seen an account which shows in great detail the Income and Expenditure under each year since 1856-57, and including the last revised estimate for the present year in the same detail, this account includes both the Indian and Home expenditure, and at one view presents a comparison between each year and every item. This return I will lay on the table, and have it printed for the information of this Council and the public at large. My Honorable friend the Member for Bengal, referred to such an account some time ago, and I expressed my readiness to present it if moved for. As it has not been moved for by any other Member, I will do so myself. By this account it will be seen that, while the net income from 1856-57 to 1859-60 increased by no less a sum than £4,402,817, yet that the charges other than Military, that is, charges including all Civil purposes, increased in India by £3,751,347, and at Home by £2,167,492, making an increased charge during those four years, altogether, independently of our Military charges in India, of no less than £5,918,839, while the increased revenue was, as stated, £4,402,817, so that in round figures we are worse by £1,500,000, in a financial point of view, in relation to our present Civil expenditure, than we were before the mutinies. The account which I will present will show in detail, item by item, at one view, how this remarkable result has arisen. I may, however, mention the chief heads of increased income and of increased expenditure:—

The additional income adverted to consisted of

	£
Land Revenue	772,702
Sayer	51,923
Abkarry	100,804
Customs	1,402,531
Salt	345,000
Opium	1,060,000
Post Office	344,096
Stamps	46,200
Mint	164,366
Judicial Receipts	87,814
Sundries	27,381
Total ..	£4,402,817

The great bulk of this increase consists of Land Revenue, Customs, and Opium, and is chiefly attributable to the acquisition of new territory, or the imposition of new taxes.

The increase of expenditure was:—

Collection of Revenue ..	169,838
Civil and Political Establishments, deducting £1,000,000, for compensation as above explained	1,127,263
Judicial and Police charges ..	1,051,342
Buildings, Roads, and Public Works	403,750
Interest of Debt in 1859-60, to which £200,000 is to be added for the future ..	792,406
Sundries ..	206,723
Total ..	£3,751,347

These are the items as they appear in the Indian accounts. The increase in the Home charges has arisen chiefly from about £1,000,000 additional for interest for loans, and the remainder consists of increased charges connected with the relief of a larger European Army in India, and the annually increasing interest of the Guaranteed Railway Companies. But the return which I will present will show all those details, both for the past years and the estimate for the present year. And of this I feel confident, that the more these facts are examined and understood, the more it must be seen that it is utterly impossible for the Government to recede from the position it has taken, or make any concession that could in any sensible degree affect the productiveness of the Income-Tax.

Sir, in listening to the petitions which have been read at the table today, I think one of them concluded with a prayer for two objects:—one was that at least this Council would consent to postpone this tax, and the second was that, if ultimately it should be found that adequate reductions could not be made, then, that some tax less objectionable should be imposed. Now, Sir, to the first of these prayers I would at once say, that nothing could be more dangerous than to adopt the ordinary subterfuge in difficulties of putting off the evil day. But I would say more, if, were we disposed to adopt so objectionable a course, we could not do it. People speak of the state of our Finances before 1856-57, but was it a satisfactory one? In the five years of peace which preceded that year, our annual expenditure was supplemented by £5,000,000 of borrowed money during those years. But, however discreditable such a system was in time of peace, it was at least possible with a deficiency of one million a year, but with such a deficiency as we now have, hold it to be simply impossible to resort to such a system, however much it might be desired. But if it were, where should we be three or four years hence? We should have an additional debt, the interest of which would absorb another Income-Tax. Then I ask those who now object so much to taxation to the extent to which it is necessary under existing circumstances, what they would do when the increased interest of further debt, perhaps doubled the amount which it would then be necessary to raise? No, Sir, the time will never come when the emergency can be met, when our downward course can be arrested, by so small an amount of taxes as at this time, nor, I sincerely believe, when the people will be more able or willing to bear them. But then, they ask for a less objectionable tax. Well, Sir, all that I can say upon this point is this; the primary rule laid down by the Government in fixing upon this tax was that it should affect all alike according to their incomes, whether Natives or Europeans, whether official or non-official. That was a rule from which nothing could induce us to depart. Well, we have industriously enquired into every description of tax known to the Natives, either before or since British rule. I have here the celebrated report of Mr. Mountstuart Elphinstone of the condition of the territories of the Peishwa when conquered by the English. His account of the revenue system shows that the taxes, both direct and indirect, were very numerous. We have examined other records of native taxes, and I am bound to say that in the whole number I have found only *one*, the incidence of which would not in practice fall almost exclusively on Natives; and that *one* is thus described amongst others by Mr. Elphinstone as "*a tax upon shop-keepers varying with their means—in fact an Income-Tax.*" Those are Mr. Elphinstone's words. But I know that it is not so much to the payment, as to the supposed inquisitorial nature of the tax, that the Natives, like others, object. Well, Sir, that is a question of administration, and I entertain strong hopes that by the improvements introduced into the Bill, that objection will be greatly modified, if not altogether removed. And fortunately, we are not without experience on this head. The Income-Tax has been partially in operation in the Punjab for some months;

in Oudh it has been introduced generally into every town and district. The assessments have been all made; in many places the first instalment has been wholly collected, and in all a large portion of it; and we are assured by the officers on the spot that all this has been done without having resort to any such inquisitorial practice, and without even any difficulty. But even this experience has suggested improvements which will be useful in other places. Are we then to believe that what has proved so possible in Oudh cannot be equally well done elsewhere? Our most recent informations from Oudh and from the North-West is most encouraging in this respect. We have not yet found a single officer who has expressed a doubt of being able to carry out the tax and without difficulty, especially in the altered form in which it will now be framed. The chief complaint that we hear from Oudh is, that while they are subjected to this tax, their neighbors are still exempt. These, Sir, are our reasons for adhering to this tax; these are the grounds upon which we cannot consent to postpone its operation.

Well, Sir, I will now, in a few words, describe the modifications we have made in the Bill. But first as to the changes which we have not made, though urged in many petitions. We have not raised the limit above 200 Rupees, because we could not do so without materially affecting the productiveness of the tax; and that we should not be justified in doing. We have not given up the one per cent. for local public works, because it is so much required; because, although expended on local public works, it cannot fail very materially to benefit indirectly our Imperial finances. Considering the relation which the Government of India holds towards the people of India, there are many works which, though purely local, are yet so important to the interests of the State indirectly, that, if not done by the localities from local funds, must, in self-defence, be done by Imperial funds. Even take the example of this port; unless something is done soon, it is clear that the trade must suffer, and if the trade suffer, the revenue suffers. But take a more striking and general example; Railways are being made in every part of India; the interest of the capital is guaranteed by the Government. The risk is ours. How are they quickest and best to be made profitable, so as to relieve the Government of that charge, and to return, in the course of time, the accumulating balance annually placed at their debit in the books of the State? This can best be done by the means which best promote traffic. What is the complaint most made now in respect to this point? The Lieutenant-Governor of Bengal has sent us up an able report, showing that without new roads made to the Stations on the line, the development of traffic must be much retarded. Well, these are local works in which Imperial finance is directly interested. It is these and similar reasons which induce us to retain this part of our proposal. We look to general prosperity as being the best guarantee for financial improvement, and we look to these works as being one of the best means of securing that prosperity. The modifications which we have made are these:

1. As the Bill stood, we proposed to assess the Zemindars holding under periodical revisions at *one-half* of the Government jumma. In enquiring into this point on his way down from the North-West, the Governor-General has come to the decision that one-half more than represents the real profit of the Zemindar, inasmuch as no allowance was made for the cost of management, and that if 10 per cent were allowed for that, the real proportion would be *one-third*. Again, the Honorable Member for Madras has represented that in that Presidency the settlement is made upon the basis of about three-tenths of profit. The Bill as amended adopts therefore *one-third* in place of *one-half*

2 There are several questions arising out of what is called the double Income-Tax, for example, a person in India holding Consols in England is charged with the Income-Tax there, and, if charged here, would be liable to two Income-Taxes. We propose therefore to exempt Incomes from

foreign funds, except so far as such Incomes may be brought into India, and form part of a person's means of living in this country.

3. We apply the same rule to Income derived from other property, such as lands, or houses, or investments in England or any foreign country.

4. With regard to pensions, either Civil or Military, if the person resides out of India, and draws them from the Secretary of State in England, they will be exempt. But if drawn in India, whether the person reside in India or not, or if drawn at home by a person residing in India, they will be chargeable.

5. With regard to commercial profits, we desire to pursue the same course as nearly as we can. In England the profits of merchants having houses in England are charged wherever made. What we think is this; the profits of all Indian houses, whether made in India or elsewhere, so long as the business is, in either aspect, Indian, are chargeable. If goods are bought in Manchester, and consigned to the same house in Calcutta, though the profits might be made to appear in the Manchester, and not in the Calcutta books, yet the profits should be regarded as equally Indian as English, so far as the house here is concerned; or if produce be shipped to London, the profits in like manner should appear as those of the Indian firm.

But suppose a merchant in Calcutta is a partner in a house in London which has branches of business, of an entirely neutral kind, say between London and South America, or between London and Australia, not involving Indian business at all, then we think the merchant should be exempt in respect to the profits of such neutral trade, except so far as he might import such profits as a part of his Indian Income.

With regard to the Indian funds, we are of opinion that under all circumstances they must pay the Indian Tax, nor does it appear that this circumstance has checked the demand for them in England, for during the last two months or so, paper has been enfaced for England, and made subject to the Income-Tax, to the extent of nearly £1,500,000 in round numbers.

6. With regard to the Army and Navy, the Committee has decided that all shall be chargeable, whose net incomes and emoluments are not less than those of a Captain in the Queen's Army.

There is only one other topic upon which I wish to say one word. I have again been urged to press the Home Government for an Imperial guarantee to the Indian debt; and it has been represented that we might perhaps save a million a year or more in the form of interest. Sir, I believe such a bargain, though it did save India apparently a large sum in this way, would be the worst in the shape of economy she ever made. Gentlemen, when they discuss this question, forget that it is a principle never departed from by Parliament, that if responsibility is incurred by the Imperial Exchequer, absolute control must be given to the Imperial Treasury, or such a power of check and interference as amounts to that. Well, Sir, when we consider the money relations which have always existed and which in future, are likely still more to exist: when we consider how hampered our action would be in India, if the consent of the Treasury were required for this and for that; if we consider how it would tell against Indian interests, if upon all occasions of settlement of accounts of balancing the respective shares in wars partly foreign, the decision of the Treasury at Home were to be final and conclusive—if we consider all this, we shall have very little difficulty, I think, in arriving at the conclusion that it would be much more economical to retain our own independent control over the Finances of India, without the Imperial guarantee, than to submit ourselves to the double supervision and final decision of the Treasury at home, with all the advantage which such a guarantee could give; and the more the character of the Indian Army becomes European, the more important this consideration becomes. The last thing a nation should give up is its

independent power and control over its own Exchequer, and as it is quite certain that, if given at all, or at any time, it could only be on such conditions, I own I cannot recommend such a step to be taken, even were it within our reach, which it is not, nor is likely to be.

Sir, I have now touched upon all the topics which it appears necessary that I should do at this time, to put our real position plainly before the country, in relation to this Bill. I have shown you, I hope, conclusive reasons why it is impossible we can recede from the position we have taken, without deserting our first duty. I have shown you that the crisis we have to encounter is as serious if not more so than it appeared to be on the 18th of February. I have told you that the mature deliberation of the Supreme Government, taken upon a review of all that has passed, and all that is known, points to a steady prosecution of the work we have begun. To this end we are ready to devote our most anxious efforts; we can consent to any personal sacrifices; we can consent contentedly to obloquy and to be misrepresented and misunderstood; but there is one thing to which we cannot consent. We cannot consent to be parties to deluding the public by the suppression of facts, however unpalatable, or by the adoption of palliatives which, however they might smooth our path for a time, could only end in public disappointment.

MR. WILSON postponed till Saturday next, the presentation of the Report of the Select Committee on the Bill "for the licensing of Arts, Trades, and Professions."

BOUNDARY MARKS (FORT ST. GEORGE.)

MR. FORBES presented the Report of the Select Committee on the Bill "for the establishment and maintenance of boundary marks, and for facilitating the settlement of boundary disputes, in the Presidency of Fort St. George."

SUCCESSIONS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "for facilitating the Collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons."

ADMINISTRATOR GENERAL.

MR. FORBES moved that the Bill "to amend Act VIII of 1855 (relating to the office and duties of Administrator General,)" be read a third time, and passed.

The Motion was carried, and the Bill read a third time.

STAMP DUTIES.

MR. WILSON moved that the consideration of the Bill "to consolidate and amend the law relating to Stamp Duties" be postponed till Saturday next.

Agreed to.

ADMINISTRATOR GENERAL.

MR. FORBES moved that Sir Bartle Frere be requested to take the Bill "to amend Act VIII of 1855 (relating to the office and duties of Administrator General,)" to the Governor General for his assent.

Agreed to.

The Council adjourned.

Saturday, June 2, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

His Excellency the Commander-in-Chief,	H. B. Harington, Esq.,
Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq., and
Right Hon. J. Wilson,	A. Sconce, Esq.

ADMINISTRATOR GENERAL.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General

had assented to the Bill "to amend Act VIII of 1855 (relating to the office and duties of Administrator General.)"

EMIGRANT VESSELS.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding a Despatch from the Secretary of State on the subject of allowing Vessels furnished with Normandy's apparatus for distilling sea water a reduction to the extent of one-third in the quantity of fresh water required by law to be placed on Emigrant Ships leaving India for Her Majesty's Colonies.

SIR BARTLE FRERE moved that the above communication be printed.

Agreed to.

VILLAGE WATCHMEN.

THE CLERK also reported that he had received a communication from the Government of Bengal, forwarding minutes of judgments passed by the Sudder Court in the Chowkeydaree Chakeran cases.

MR. SCONCE moved that the above communication be laid upon the table and referred to the Select Committee on the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal." It seemed to him unnecessary that the communication should be printed.

Agreed to.

LICENSING OF ARTS, TRADES, AND PROFESSIONS.

MR. WILSON said, in presenting the Report of the Select Committee on the Bill "for the licensing of Arts, Trades, and Professions," he had very few observations to make. The Committee had not made any material alterations in the Bill, but they had made an addition of great importance, to which he wished to advert in a very few words. It would be remembered that one of the means by which, as he stated on the 18th February last, the Government of India proposed to increase the revenues of the country was by a Tobacco Tax. At that time he said that the Government had come to no decision as to the precise mode in which the tax should be imposed. Since that time, however, the subject had engaged the attention of the Government, who, after communication with the local Officers, had come to the conclusion, all circumstances considered, that the most convenient and best plan of imposing this tax, one that would interfere the least with the course of trade, and impose on Government the smallest cost of collection, would be to charge it in the form of a special License Duty on dealers in Tobacco. No doubt the tax might not be so profitable in this shape as it might have been in some others, still it was a form that, as he had already stated, would be accompanied with a comparatively small cost of collection and very little interference with trade. For it must be borne in mind that at present a considerable number of special License Duties were in force under the Abkaree system, and the machinery, therefore, already existed by which a Tobacco License Duty in this form could be collected with ease, and with little or no additional cost. In the present great paucity of public officers in the Revenue Departments throughout the country, and having reference to the great increase of duty which the Income and License Taxes would throw upon them, it must be obvious how desirable it was to adopt a plan, in relation to Tobacco, which would not impose upon them another and entirely new machinery and organisation in order to carry it out. Having reference to these difficulties, we had therefore decided to adopt this plan, involving no new machinery but using only that which now existed. But there would be no monopoly given to any one. All would be equally at liberty to take out a license who wished to carry on the trade. The perfect freedom of purchase from the grower, and of sale to the consumer, as they now existed, would be continued. Having come to this decision, the Govern-

ment then thought that the most convenient course would be to insert such provisions in this Bill, special and apart, as were required to carry out this object. This then constituted the main difference in the Bill to which he desired to draw the attention of the Council. When the Bill should come into Committee of the whole Council, they would have full opportunity of discussing these and other provisions in detail.

UNIVERSITIES.

SIR BARTLE FRERE, in rising to move the first reading of a Bill "for giving to the Universities of Calcutta, Madras, and Bombay the power of conferring degrees in addition to those mentioned in Acts II, XXII, and XXVII of 1857," said that this Bill was intended to supply an omission in the Acts constituting the Universities in the three Presidency Towns. The number and character of the degrees which the governing bodies of those Universities were competent to confer was strictly limited by the Acts in question, and it was found, soon after the Acts were put into force, that it was very desirable to enable the governing bodies of those Universities to grant other degrees, in order to enable them to give that assistance which Universities alone could afford to education with reference to the state in which it happened to be at each Presidency Town. A proposition in consequence was made by the University of Calcutta asking to be empowered to confer degrees other than those specified in its Act of incorporation. As this could not be done without a change in the Act of the Legislature, and as good reason had been shown for the change, he had been instructed to move the first reading of this Bill.

The Bill was read a first time.

STAMP DUTIES.

MR. SCONCE postponed the consideration of the Bill "to consolidate and amend the law relating to Stamp Duties" till Saturday next.

SUCCESSIONS.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons"; and that the Committee be instructed to consider the Bill in the form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee after the insertion of the word "one" in the blank in the 27th line of Section IX, that being fixed as the maximum rate of percentage to be allowed as Commission to a Trustee appointed, under that Section, in the case of disputed succession.

The Council having resumed its sitting, the Bill was reported.

The Council adjourned.

Saturday, June 9, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President.*

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq., and Hon'ble Sir M. L. Wells.

Sir Mordaunt Wells was duly sworn and took his seat as a Legislative Councillor of the Council of India.

THE VICE-PRESIDENT said that as, in consequence of the Chief Justice being obliged to attend the Session of the Supreme Court, the quorum required by law for a Meeting of the Council for the purpose of making Laws could not be formed, it was understood that there would be no Meeting to-day for the transaction of business. The Members present had met, however, for the purpose of adjourning the Council to Wednesday next, on which day it was considered desirable that the Council should meet.

The Council was accordingly adjourned by the Vice-President at half past 11 o'clock, till Wednesday, the 13th instant, at 11 o'clock.

Wednesday, June 13, 1860.

PRESENT:

The Hon'ble Sir Henry Bartle Edward Frere.

No other Member of the Council was this day present, and the Council was adjourned till Saturday the 16th instant.

Saturday, June 16, 1860.

PRESENT:

The Hon'ble Sir Henry Bartle Edward Frere.

H. B. Harington, Esq., | H. Forbes, Esq., and A. Sconce, Esq.

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws.

The Council was adjourned at half-past 11 o'clock till Wednesday evening the 20th instant, at 7 o'clock.

Wednesday Evening, June 20, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

The Hon'ble Sir H. B. E. Frere,	H. Forbes Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq., and
H. B. Harington, Esq.,	Hon'ble Sir M. L. Wells.

INCOME TAX.

THE CLERK presented to the Council the following Petitions:—

A Petition of Native Inhabitants of Bombay concerning the Bill "for imposing Duties on profits arising from Properties, Professions, Trades, and Offices."

A Petition of Proprietors of permanently settled estates in Bengal, Behar, and Orissa against the same Bill.

A Petition of Inhabitants of Patna, against the same Bill

A Petition of Zemindars of Shahabad, against the same Bill

A Petition of Maharajah Mohisar Bux Singh Bahadoor, of Shahabad, against the same Bill.

A Petition of Maharajah Moheshur Sing Bahadoor, of Tirhoot, concerning the same Bill.

A Petition of Rajah Puhladh Sein, Proprietor of the Raj of Ramnagur, Purgunnah Bujhoon Surkar Chumparun, concerning the same Bill.

A Petition of Ram Coomar Singh, of Shahabad, against the same Bill.

A Petition of Ramessur Bux Singh, of Shahabad, against the same Bill

A Petition of Mothoorah Persaud Parrey, of Shadabad, against the same same Bill,

A Petition of Syad Shumsher Alee and others, of Tirhoot, concerning the same Bill.

A Petition of certain Residents and Inhabitants of Tipperah, employed under Government, against the same Bill.

Mr. Wilson moved that the above Petitions be printed.

Agreed to.

PARSEES.

THE CLERK also presented a Petition from Modee Roostumjee Khorshedjee and others of Surat, concerning the Petition of the Parsees of Bombay, submitting the draft of a Code of Laws for the Parsee Community.

SIR BARTLE FRERE moved that the Petition be printed.

KOONCH AND CALPEE.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to remove the Pergunnahs of Koonch and Calpee, in Zillah Jaloun, from the operation of the General Regulations."

ARMS AND AMMUNITION.

MR. HARINGTON also presented the Report of the Select Committee on the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)." He said, in presenting this Report, he would, with the permission of the Council, offer a few remarks explanatory of the alterations which the Select Committee recommended should be made in the Bill to which it related. Those alterations were very considerable, and some of them were of a very important character, and it was on that account that, instead of following the usual course of presenting the Report of the Select Committee without any comment, he was anxious, at the present stage, to explain the nature and extent of the changes proposed by the Select Committee and the grounds of their recommendations. In doing this, he trusted that he should be consulting the convenience of the Council.

Honorable Members would recollect that the Bill, as read a second time, proposed merely to make perpetual Act XXVIII of 1857, commonly called the disarming Act, without any modifications. From the copy of the Bill containing the alterations proposed by the Select Committee, which would be circulated to Honorable Members with a copy of the Report just presented, it would be seen that the Select Committee were of opinion that Act XXVIII of 1857 should be entirely remodelled, and, as he had already intimated, very materially altered.

He would not refer particularly to the debate which took place on the motion for the second reading of the Bill, or to the opposition which was then offered to some of the provisions of the Bill. The Honorable and learned Judge (Sir Charles Jackson) from whom that opposition chiefly proceeded, and who alone, if he recollected aright, voted against the motion for the second reading, was not now present, and he would not therefore have an opportunity of answering anything which he (Mr. Harington) might say on the subject of that opposition. Suffice it then to remark that what had fallen from the Honorable and learned Judge on the occasion referred to, as well as from other Honorable Members, had been carefully considered by the Select Committee, and some of the alterations proposed in the Bill by the Select Committee were traceable to the objections taken by the Honorable and learned Judge and others to Act XXVIII of 1857 as in force at the present time. The only other remark which he would make in connection with the debate which took place on the motion for the second reading of the Bill had reference to an objection which had been very generally urged in respect to Act XXVIII of 1857, namely, that it applied to Europeans as well as natives. It was contended by those, who entertained this objection that, looking to the circumstances of the country, to the objects which must be had in view in introducing a law into India relating to the use of arms and ammunition, to the relationship in which the European residents stood to the natives, to the position and character of the former, and to recent events, it was not politic, necessary, or proper that an Indian disarming Act should extend to Europeans, but that its operation should be confined to the natives. Admitting that there might be some force in the objection, he continued of the opinion which he had all along held that class legislation of the nature of that proposed was very undesirable, and that it should be avoided if possible. It must be scarcely necessary for him to remark that if the European population only had to be considered, no Bill such as that now proposed could be necessary. He freely acknowledged that, as a class, the European and American population of India might safety be exempted from the operation of the present Bill—but so might large classes of the natives also—and it was the extreme difficulty of making a selection or drawing a distinction which should not be open to the charge of partiality or

invidiousness, which had hitherto prevented him from attempting it. The present Bill, as recommended to be amended by the Select Committee, did not propose to make any distinction. Equally with Act XXVIII of 1857, it applied to all classes, but the Bill had been so framed that its proposed application to Europeans equally with natives could not, he th ught, be objected to on any reasonable grounds, the more particularly as the Local Governments would still have the power of exempting Europeans from the operation of the only part of the Bill which might perhaps be deemed vexatious and harassing by that class of the community, and derogatory to their national character.

The Select Committee did not consider any alteration necessary in the title and preamble of Act XXVIII of 1857, and they had accordingly proposed that both should be adopted, word f r word, in the new Act.

The Select Committee proposed to omit Section I of Act XXVIII of 1857, which required that in places to which that Section was extended, written notices of the possession of Arms should be given to the Magistrate. They also proposed to omit Section XXIV, which authorized a general search for arms, ammuni ion, &c., in any District.

As regarded the latter Section, he (Mr. Harington) was compelled to say that what he had heard since the Bill was last before the Council had satisfied him that in practice this Section had led to a great deal of oppression, and had proved in the hands of the Native Police a powerful and fruitful means of bribery and corruption, if not of something worse, and he was decidedly of opinion that the Section should not be retained as part of a permanent disarming Act, unless its enforcement could be entrusted to a much greater exent than was now the case, to European Agency, which, looking to the great and pressing demand for agency of that description at the present time in other Departments, was simply impossible.

Sections I and V Act XXVIII of 1857 left it to the Executive Government to determine to what places those Sections should be extended. Section XXVI, which applied to the manufacture, use, or possession of cannon, howitzers, and mortars was of the same exceptional character as regarded its application. The Select Committee proposed that the new Act should be of general application, though they would reserve to the Executive Government the power given in Section XXXIV of Act XXVIII of 1857, of withdrawing from time to time from the operation of all or any of the provisions of the Act any part of any District, and in like manner as occasion should require to subject the same again to all or any of the provisions of the Act. The Select Committee considered that this would be quite sufficient.

In lieu of Section XXVI Act XXVIII of 1857 the Select Committee proposed that the manufacture in India, or the importation into India, of cannon, howitzers, or mortars should be prohibited under a heavy penalty, unless the manufacture was authorized or the importation licensed by the Governor General of India in Council, or by some person specially authorized by the Governor General of India in Council in that behalf. The effect of this provision, if adopted, would no doubt be to restrict the manufacture of cannon, howitzers, and mortars to the Government Foundries, and their importation for Government use, and it seemed proper that it should be so. Permission might be given by the Government, on the payment of a fee, to any person to possess cannon, howitzers, or mortars It was probable that this permission would be very sparingly accorded.

The Select Committee had thought it proper to recommend that the written notice of the possession of arms required by Section 1 Act XXVIII of 1857 should be discontinued. The compilation of a register of such notices, which would still be absolutely necessary if the Section were retained, entailed great labor upon the officers of Government, and the requisition was very harassing to the people without being attendant with any commensu-

rate benefit. The rule also gave rise to every kind of evasion. The Select Committee believed that the object in view in this and other Sections might be attained much more effectually and in a much simpler manner by enacting that no person should manufacture or deal in arms of a certain description, or in percussion caps, sulphur, gunpowder or other ammunition, and that, with certain exceptions, no person should go armed or carry arms without a Government license, which should be obtainable on payment of a small fee, and that whenever a Magistrate should have reason to believe that any person residing within the limits of his jurisdiction had collected any arms of the description mentioned in Section V of the Act, or percussion caps, sulphur, gunpowder, or other ammunition for any unlawful purpose, or that any such person had a larger quantity of such arms, percussion caps, sulphur, gunpowder, or other ammunition in his possession than in the judgment of the Magistrate could be left in the possession of such person without danger to the public peace, it should be lawful for the Magistrate, having first recorded the grounds of his belief, to cause a search to be made of the premises occupied by such person, or on which the Magistrate might have reason to believe such arms, percussion caps, sulphur, gunpowder, or other ammunition were to be found, and to seize and to detain the same in safe custody for such time as he might deem necessary, the search in such case being conducted by the Magistrate in person or by a Joint or Deputy Magistrate, or by a European Assistant. Provisions to this effect had been introduced into the Bill by the Select Committee. The local Government had at the same time been empowered specially to exempt any persons it might think proper, other than those specified, from the operation of the Section relating to the carrying of arms. This was the Section which, in his preliminary remarks, he had suggested might possibly be deemed harassing and vexatious by the European community.

Having thus briefly mentioned the principal alterations proposed by the Select Committee in the Bill, he would not further occupy the time of the Council, but would conclude by giving notice that on Saturday next he should move that the Bill amended as proposed by the Select Committee should be referred to a Committee of the whole Council.

UNIVERSITIES.

SIR BARTLE FRERE, in moving the second reading of the Bill "for giving to the Universities of Calcutta, Madras, and Bombay, the power of conferring degrees in addition to those mentioned in Acts II, XXII, and XXVII of 1857," observed that there was only one point on which he need trouble the Council with a brief explanation. It had been stated that this was a Bill calculated to degrade the Universities, and to lower the standard of education in India. He could not imagine how such an impression could have been formed of the measure—for what was the object and history of the Bill? The Acts creating the Universities strictly defined the degrees which the Universities could legally confer. But on commencing to work these Acts, the governing bodies of the Universities discovered that the utility of the institution would be greatly limited, unless they had power to confer other degrees, and as the Act did not permit them to do so, they applied to Government to move the Legislative Council to enlarge their powers so as to enable them either to confer the particular degrees which the Senate then thought desirable, or such other degrees as the Senate with the approval of the Governor General in Council should from time to time appoint.

It was considered by the Government of India that the latter was the preferable course, and consequently the present Bill was drawn in general terms, so as to enable the Universities to confer such degrees as they might think necessary, other than the degrees expressly provided for in the Acts constituting the Universities. He failed to see how it was possible that

such enlargement of the powers of the Universities could degrade those bodies or tend to lower the standard of education.

He could have understood, even if he had not concurred in, the objection if applied to any alteration in the constitution of any ancient University. It might be said, with some show of reason, that these bodies had existed for ages, their statutes were the result of the accumulated wisdom of ages; depart from them in the slightest degree, you impair the value of the stamp which the University degree affixed to attainments of a certain standard. This might have been said, and has been said very lately, in the case of our two most celebrated Universities, but were Oxford and Cambridge deterred by the threatened evil? Certainly not. During the past five or six years the most extensive and fundamental changes had been made in many parts of the constitution of both Universities, and at Oxford especially, the more conservative of the two, measures had been taken to extend some portion of the advantages of an University degree, conferred under a name heretofore unknown to either University, on scholars who had, previous to examination, had no connection whatever with the University.

He was not now offering an opinion on the propriety of this move at our English Universities. He was simply pointing out the truth that even the oldest and least changeable of our Universities found it absolutely necessary to alter their laws and to vary their degrees in order to suit the changed circumstances of education and to meet the altered wants of those classes for whose benefits the Universities were designed.

What was there then in our Universities which should exempt them from the necessity of making even fundamental changes in their constitution, if it was clear that such changes were beneficial? It was barely two years since the Acts which formed the charters of the Universities were passed, and they could not therefore claim exemption from change on the score of antiquity, nor could it be expected that they should have been formed, at their first institution, on so perfect a model as to preclude all necessity for subsequent improvement or alteration.

But who should judge whether any change would be beneficial or necessary? He believed that the decision could not be left in safer hands than where the Bill proposed to put it by entrusting it to the Senate or governing body of the University. Be it remembered that it was that body which had asked for this Bill; and in bringing it in, the Government simply gave effect to the wishes of that body.

He believed that the Senates of the Universities were infinitely better able to judge of such matters than any Government or legislative body possibly could be. He held it essential to the vitality of any University to give it the largest possible power for self-government. He did not say it was impossible that such powers might be abused, for he believed they could never ensure the exercise of any power to do good without having some power to do harm, but he was quite sure the power could not be placed in better hands than those of the highly qualified bodies which now formed the Senates of the three Universities.

He could see nothing in the suggestions of the governing body of the Calcutta University or of either of the others to lead him to apprehend any indiscreet or unnecessary exercise of the powers which it was proposed to entrust to them. Taking their recommendation as an index of the mode in which they would probably exercise the desired powers if they had them, we found that they suggested three degrees beyond those specified in the Act of 1857. These three were Doctor of Law, Licentiate in Law, and Licentiate in Civil Engineering.

Now he did not suppose that any objection would be raised to giving the Universities the power to confer the degree of Doctor of Laws, or that any one would accuse the Senate of a desire to degrade the University by conferring such a degree. It was, he imagined, to the proposition for creating the degrees of Licentiate of Law and Licentiate of Civil Engineering that exception was

Sir Bartle Frere

taken. But how stood the case? Why should not the University confer the degree of Licentiate in Law and Civil Engineering as well as that of Licentiate in Medicine, which was already provided for by the Act? It was in the two departments of Law and Civil Engineering that the stamp of an University degree was calculated at the present time to be of most practical benefit, and what was the consequence of having no degree lower than those of Bachelor of Laws, and Master of Civil Engineering? Why, that in the present state of education either the degree would seldom or never be taken, or there would be a continual pressure on the examiners to lower the standard, so as to admit men who had not attained the standard fixed for Master or Bachelor's degrees. It was surely preferable to maintain the high standard of those two degrees, and to permit the University to stamp an inferior but still highly useful amount of attainment with a mark of inferior value. It was this the University desired to do, and in the reason the Senate assigned for such wish he saw grounds for confidence that, whether they used the powers the Bill would confer on them to create sub-degrees or not, their action would be guided by an intelligent adaptation of their means to existing circumstances, and that the powers sought for could not be placed in better hands.

The Motion was carried and the Bill read a second time.

SUCCESSIONS.

The Order of the Day being read for the third reading of the Bill "for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons"—

MR. HARINGTON said, before moving the third reading of this Bill, he must ask the Council to allow it to be recommitted to enable him to move the omission of a Section which, in consequence of the amendment made by the Council at large, on the recommendation of the Select Committee, in Section VIII of the Bill, had become redundant. Section XXI was the Section to which he alluded. The last Clause of Section VIII as ordered to stand part of the Bill, declared that "in such case the certificate shall describe the securities in respect of which such powers are given, and such powers shall not be vested by the certificate except by express words." The same provision was repeated in Section XXI, for which there could be no occasion, though, if that Section were struck out of the Bill, it would be proper to insert the words "and shares" after the word "securities" in line 10 of Section VIII; and if the Council would allow the Bill to be recommitted, he (Mr Harington) proposed to move the insertion of those words before making the motion for the omission of Section XXI.

Agreed to.

The proposed amendments were severally carried; and the Council having resumed its sitting, the Bill was reported.

MR. HARINGTON then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

STAMP DUTIES.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to consolidate and amend the law relating to Stamp Duties," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. SCONCE asked for the permission of the Council to go back to Section XIII, for the purpose of proposing the introduction of the following Clauses after Clause 6:—

"The cost of transmitting all deeds, instruments, and writings required to be stamped under this section and the cost of registering the same at the Post Office for transmission, shall in all cases be borne by the party applying to have such deeds, instruments, and writings stamped."

"The Government shall not be responsible for any loss or damage which may occur in respect of any deed, instrument, or writing entrusted to the Collectors of Stamp Revenue, and no person employed by the Government

in the Stamp Department shall be responsible for any such loss or damage, unless that person shall wilfully, fraudulently, or by gross negligence cause such loss or damage."

MR. HARINGTON said, he doubted whether the new Clauses just proposed by the Honorable Member for Bengal were really necessary. He thought that the Post Office Act and the Rules issued from that Department fully provided for the case intended to be met. He threw this out merely as a suggestion. He had no intention of opposing the motion.

SIR BARNES PEACOCK said, as he understood it, the Post Office Act merely protected the Post Office. The question now was who should be liable for any loss or damage caused wilfully, fraudulently, or through gross negligence. Suppose in transmitting a deed from the Stamp Office to the Post Office, the deed were to be lost. The Post Office Act would not protect such a case, nor also the case of the Post Office being burnt down. With regard to the first Clause proposed by the Honorable Member for Bengal, he thought that, even if the Post Office rules were sufficient for the purpose, there would be no harm in making express provision for it in this Bill.

MR. SCONCE said, his proposed amendment, instead of weakening the Post Office Act, would only tend to strengthen it and make it more complete. The amendment required that the Collector should not stamp a document unless the party applying paid all the necessary charges.

SIR BARTLE FRERE said, unless a packet was prepaid it might not be received at the Stamp Office, and at any rate it could not be registered without being prepaid. He knew there was a proposition before Government to amend the Post Office Act with a view to making it more complete in this respect, and he had just been reminded that the amendment before the Council was proposed at the instance of the Government with reference to a case in which a party gave a bond to the Collector, who was required by law to send it to the Superintendent of Stamps for the purpose of being stamped, while the owner declined to pay the Registry fee.

The Clauses were then severally put and agreed to.

MR. WILSON said, he would now call the attention of the Council to Schedule A. In Article 1 he proposed to add a provision for a uniform Stamp Duty upon agreements for loans by Bankers made for short periods upon the deposit of notes or other securities of the Government of India. It appeared that a very large portion of Banking business was carried on by means of loans obtained on the deposit of Government Securities, and the Bill, as it now stood, contained no provision in respect of such loans, which would therefore come under the general head of Bonds It was very desirable, however, that transactions of this kind, which had hitherto been entirely free from Stamp Duty, should have some facility given to them with as little sacrifice of Revenue as possible; and therefore he proposed the addition of the following Clause to the Article :—

"Agreements for loans by Bankers made for short periods not exceeding three months upon the deposit of notes or other Securities of the Government of India, with or without a deposit of the acceptance or Promissory Note of the borrower, provided that no such agreement is drawn in the form of a Bond or of a Bill of Exchange or Promissory Note, or in any such way as would render it a negotiable instrument passing by endorsement, for whatever amount, in case such loan shall not exceed one month; the uniform stamp of .....2 Rupees.

And in case such loan is for a period exceeding one month or not exceeding three months .....4 Rupees.

SIR BARNES PEACOCK said, before putting this motion, it appeared to him that it was not fair to persons requiring small loans. We could not shut our eyes to the fact that many persons went to Banks for the purpose of speculating in Government Securities. He saw no reason why an honest trader, requiring a small loan, say of 500 Rupees, if he were unable to deposit Government Paper as Security, should have to pay a

proportionally larger amount of Stamp Duty than a person who, on the deposit of Notes of the value of one lakh of Rupees, could borrow 80,000 Rupees for the purpose of speculating in the Government Securities of the day, gambling in Opium, and the like. He (Sir Barnes Peacock) thought it was very unfair that persons holding Government Securities should be more favored than those who possessed other descriptions of Securities. He believed that it was the rule for Banks not to advance money upon personal security. He did not see why a man who could obtain a loan from a Bank on the deposit of Government Paper should be placed on a better footing as regards payment of Stamp Duty, than the small trader. This appeared to him to be giving a bonus to large dealers, over persons probably much more honest than themselves, for the purposes of speculating in Government Securities, &c.

MR. WILSON said, he thought that his Honorable and learned friend would see a wide distinction between the two cases. The practice in England was for parties to raise loans on the deposit of Government Paper upon an agreement bearing a half Crown stamp, and the essential part of the loan was the security thus given. If a Bill of Exchange or a Promissory Note were discounted, or if the method of borrowing money on a Bill of Exchange or Promissory Note were resorted to, such transaction partook of a commercial character; it was quite different from that of a loan made upon the deposit of Government Security. There could be no doubt that persons who had Government Securities in their possession were in a position to borrow money on better terms than those who were not so fortunate. He (Mr. Wilson) had no objection however to extend the proposed provision to the deposit of any securities which should not be a Bill of Exchange or Promissory Note, or to which the person borrowing is not a party, for very often it was not only customary to deposit Government Securities, but also to give Promissory Notes and Bills of Exchange bearing the same stamp. It was very obvious that, if we were to impose the same Stamp Duty on loans as we have prescribed for bonds, the former would in point of fact be placed on a footing of a prohibitory class of transactions. It very often happened that merchants required to borrow money on Government Securities for 2, 3, or 4 days, and if they were to be clogged with having to pay a heavy Stamp Duty, it would operate as a check on this class of transactions. This class of transactions had hitherto been altogether free, while bonds had borne a duty; and he thought that, if his Honorable and learned friend would take this matter into consideration, he would observe that there was a wide distinction between this class of transactions and bonds properly so called.

MR. SCONCE suggested the advisability of raising the rates of duty. As he understood it, the objection taken by the Bank of Bengal was that the Bill made no adequate provision with respect to the loans made by the Bank which by the Charter Act could not exceed three months. Thus it might happen that a loan renewed four times in the year would have to pay four times the duty that would be paid if the loans had been made for one year. But the present proposal might place the Bank in too favorable a position, and a slight increase of the rates proposed might be fairer to all parties.

MR FORBES said, he doubted whether the suggestion of the Honorable Member for Bengal would meet the difficulty of the case. The proposition made by the Right Honorable Gentleman was one which had been demanded by the public, and the Right Honorable Gentleman would remember that, at the instance of the Chamber of Commerce at Madras, he (Mr. Forbes) made a proposition on the subject in Select Committee.

SIR BARTLE FRERE said, he spoke subject to correction, but it struck him that there was a considerable difference between the two cases, owing to the practice which generally

prevailed in the Banks of keeping in hand the Government Paper of their constituency with a power of Attorney which gave them great practical power to use it for their own security. If the duty were too high, it would be evaded altogether, for the Banks might take their chance of being put to inconvenience and loss rather than pay a duty.

MR. SCONCE asked, if the Right Honorable Gentleman was satisfied that provision had been made to guard against the misuse of the Clause to the sacrifice of the duty derivable under the head of Bonds. Obviously the agreement for money lent would be confined to such Banks as the Bank of Bengal. Native Bankers of this City might avail themselves of the same rule, and in lending money under an agreement for three months, they might allow the loan to remain for a year or more. It was not obligatory to enforce payment of a debt at the date specified for payment, and thus a loan under an agreement might be largely substituted for loans under Bonds.

MR. WILSON said it was quite clear that the provision was applicable only to Bonds. It was very difficult indeed to make a law so perfect and complete that its provisions might not be evaded.

SIR MORDAUNT WELLS said, he simply wished to observe that the hardship which the Honorable and learned Chairman apprehended would result from the proposed amendment was not so formidable as was supposed, as a person might borrow 10,000 Rs. on one day and 500 Rs. on another day, and in respect of both transactions, he would have to pay under the proposed Clause for two stamps of the same value. Certainly in England there was a strong feeling in favor of uniform Stamp Duties.

After some further discussion the Council divided—

Ayes 6.	*Noes.* 1.
Sir Mordaunt Wells.	The Chairman.
Mr. Sconce.	
Mr. Forbes.	
Mr. Harington.	
Mr. Wilson.	
Sir Bartle Frere.	

Sir Bartle Frere

So the Motion was carried.

MR. WILSON said, he would now ask the Council to turn to page 28 of the Bill. A great doubt had arisen as to the proper stamp to be used in cases of transfer of shares in Joint Stock Companies, including the Chartered Banks. It was therefore considered expedient to provide for a distinct Stamp in such cases. According to the law in England, the transfer of a share in the stock and funds of the Bank of England or the Bank of Ireland, or of the South Sea Company, whether upon a sale or otherwise, was subject to a uniform Stamp Duty of *7s. 9d.*, while the transfer of a share in the stocks and funds of any other Corporation or Company was subject to a considerably higher duty. He thought, however, that it would be better if we made no distinction between the Bank of Bengal and other Banks. It was very obvious that there should be every facility given to such transfers, and therefore he proposed the adoption of what would, in point of fact, be in the character of an *ad valorem* Stamp Duty, varying according to the value of each share. With these remarks he begged to move the addition of the following item to Article 10:—

"Transfer of any share in any Joint Stock Bank, or in any other Joint Stock Company, when the original value of the said share shall not exceed the sum of 500 Rupees ... .5 Rupees.

When it shall not exceed the sum of 1,000 Rupees .....10 Rupees.

And a further rate of 5 Rupees for every additional value thereof, by steps of 500 each."

SIR BARNES PEACOCK said, this amendment appeared to him to be quite in the nature of exceptional legislation. In England transfers of shares were subject to an *ad valorem* duty. It was true that transfers of shares in the Bank of England and the Bank of Ireland paid a different rate of Stamp Duty. It might be right or it might be wrong. At any rate, it was exceptional, and we did not know the principle upon which the exception was grounded. He

therefore saw no reason why we should give a preference to one description of Joint Stock Companies over another. He did not see why the former should not pay the same duty to Government. If a man in England were to purchase a share in a Bank in India, he would have to pay an *ad valorem* duty. Why should he do so here on better terms? He saw no reason for the distinction.

Another objection he had to the amendment was that the shares of some Companies were sold considerably above their nominal value. For instance, the shares of the Bank of Bengal sold for more than its nominal value, whilst those of the Steam Navigation Companies were sold at more than double their nominal value. He saw no reason why prosperous Companies should be put on a better footing than Companies which were just started, and whose shares might be selling below par.

MR. WILSON said, in all these mercantile transactions, as his Honorable and learned friend (Sir Mordaunt Wells) had remarked, there was nothing so important as uniformity and simplicity. In legislating on this subject, it was very desirable that we should avoid throwing petty obstacles in the way of commerce. The object of imposing a uniform Stamp Duty on transfers was simply to allow these transfers to be made with as little inconvenience as possible to the parties concerned. Another reason was to avoid uncertainty, so that there might be no question of price. In making his present proposition, there was no disposition on his part to favor the Banks, as it would be seen that the uniform Stamp Duty was higher than if an *ad valorem* duty were charged. He had consulted the managers of several of the Banks in this country, and had ascertained that they were in favor of the measure for the reasons which he had already stated.

MR. SCONCE said, he felt some doubt as to what would be the effect of the amendment proposed by the Right Honorable Gentleman. As he understood, it was the intention of the Right Honorable Gentleman to propose that the transfer of the shares of public Companies should be charged at the rate of one per cent. on the original value of each full share of the Company. Now the value of a full share on the stock of the Bank of Bengal, for example, was 4,000 Rupees, so the transfer of any such share would cost Rupees 40; but, besides, as he apprehended, it might also follow from the proposal of the Right Honorable Gentleman that the transfer of a portion of a share would be chargeable with the duty of a full share. The stock of the Bank of Bengal might be transferred on quarter shares of 1,000 each, and thus, if the duty on each transfer were regulated only by the value of a full share, the transfer of a quarter share would cost as much as the transfer of a whole share. He did not quite catch the exact bearing of the amendment, but he found that, in another respect, the charge would be excessive, if, for example, the duty should be levied at the rate of one per cent. on all the shares conveyed in any one transfer. But if five shares, for example, would be transferred for the same sum as one share, this objection would not apply.

MR. WILSON said, he was not aware that such was the practice of the Bank of Bengal, and he begged to postpone the consideration of this Clause, as he was desirous of making enquiries on the subject before re-submitting the matter to the Council.

The consideration of the Clause was accordingly postponed.

MR. WILSON proposed the insertion of the following Clause in the general exemptions under Article 45 of Schedule A. :—

"Receipts given for money deposited in any Bank, or in the hands of any banker, to be accounted for, whether with interest or not, provided the same be not expressed to be received of, or by the hands of any other than the person to whom the same is to be accounted for. Provided always that this exemption shall not extend to receipts or acknowledgments for sums paid or deposited for or upon letters of allotment of shares in respect of calls upon any scrip or shares of or in any Joint Stock or other Company, or proposed or intended Company, which said last men-

tioned receipts or acknowledgments, by whomsoever given, shall be liable to the duty charged upon receipts."

He said it was very doubtful whether, under the Bill as it now stood, receipts for deposits with bankers would be charged a Stamp Duty. It was quite clear that they ought not to be so, and he therefore proposed to insert a Clause similar to the Clause in the English Act. These receipts were not in discharge of a debt, but simply in acknowledgment for money given for the purpose of being kept in custody.

Agreed to.

Article 45 also contained the following general exemption :—

"Receipts or discharges written upon or contained in any mortgage deed, or other security, or any deed of conveyance, settlement, or other instrument duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby charged."

MR. WILSON moved the insertion of the words "personal bond" before the words "other instrument."

The Motion was carried, and the Art c'e as amended then passed.

A discussion then ensued as to the effect of the repeal by Section I of this Bill of Section XXXVII of Act X of 1859.

MR. HARINGTON pr posed the omissi n of the repealing words from Section I.

MR. SCONCE moved by way of amendment the introduction of the following proviso in Schedule B :—

"Provided that in suits instituted before Collectors under Act X of 1859, for the recovery of arrears of rent, or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other suits so instituted under the same Act, the statement shall be written on paper bearing a stamp of the value of eight annas.

After some discussion, both the motion and amendment were severally withdrawn.

MR. HARINGTON then moved the addition to the Special Rule for Bengal in Article 5 of Schedule B of a Clause corresponding in terms to Section XXXVII, Act X of 1859. The Clause was as follows :—

"In suits for the recovery of arrears of rent, or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other suits the statement shall be written on paper bearing a stamp of the value of eight annas. No stamp shall be required in respect of the production or filing of any document, or the summoning of any witness, or of any application for the execution of any order or judgment passed in a suit under this Act."

He contended that the special advantage afforded by this provision was strictly in conformity to the course of legislation in similar cases for many years, and was advisedly adopted in Mr. Currie's Act, and should not be disturbed without full consideration of the working of that Act.

SIR BARNES PEACOCK said, he had protested against the advantage given by the provision at the time, and he objected to it still. In the present state of the Revenue there was no excuse for such an exceptional arrangement of Stamp Duties. Like others, he should be glad to see stamps in judicial proceedings entirely abolished. But as this could not be, he did not see that the lower rates of stamp should be allowed in this case. It eased the rich man and raised the duty payable by the poor man.

The question being put, the Council divided as follows :—

Ayes 3.	*Noes* 4.
Mr. Sconce.	Sir Mordaunt Wells.
Mr. Forbes.	Mr Wilson.
Mr Harington.	Sir Bartle Frere.
	The Chairman.

So the Motion was negatived.

After some verbal amendments in Schedule B, which were moved by Mr. Harington and carried, the Council resumed its sitting.

BOUNDARY MARKS (FORT ST. GEORGE.)

MR FORBES moved that the Council resolve itself into a Commit-

tee upon the Bill "for the establishment and maintenance of Boundary Marks, and for facilitating the settlement of Boundary disputes in the Presidency of Fort St. George," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to VIII were passed as they stood.

Section IX was passed after the correction of a misprint.

Sections X to XXX were passed as they stood.

MR. FORBES said, he wished to be allowed to say a few words in explanation of the new Sections, of his intention to propose the introduction of which he had given notice to the Committee.

When the survey and settlement departments were formed in Madras, it was found necessary to appoint the Deputy Directors of Revenue Settlements to be Sub-Collectors and Joint Magistrates in the Districts in which they might be employed, but by the law under which the grade of Sub-Collector was formed, that Officer had authority to exercise the powers of a Collector only in the particular portion of the District of which he might have separate charge, or when such power was specially delegated to him by the Collector. Now the Deputy Directors of Settlements had no separate Revenue charge in any district, so that although the Government could appoint them to be Sub-Collectors, the special delegation of power by the Collector was necessary to enable them to act.

It had been found very necessary that they should have power to act for the punishment of the fraud and corruption which were so likely to be practised in a survey and assessment, and which had actually been in several instances practised, and the first of these new Sections was intended to give the Deputy Directors the same powers for the punishment of malversation as were now possessed by all Collectors, they being restricted however to such cases as might arise in their own immediate Department, and the same general control being had over their proceedings as were now had in case of all other Sub-Collectors.

On account of the frauds of which he had just spoken, it was also necessary that the servants of the survey and assessment Departments should be declared liable to the law against malversation in the same way as all servants of the ordinary Revenue Establishments now were, and the second of the new Sections provided for this.

The last Section was not as might at first sight appear *ex post facto* legislation. It made no new offence and enhanced no punishment; no one ever doubted that it was a criminal act for a public servant to take a bribe, to defraud the Government, or to falsify the public accounts, and those to whom this Section would apply did not perform their guilty acts under any idea that they were not doing wrong or were not liable to punishment, but only with the same hope of exemption from discovery under which all crimes were committed.

Cases that had been decided by the Deputy Directors under their appointments as Sub-Collectors might however, it was feared, be reversed in appeal by the Board of Revenue, both because of the doubt he had referred to, whether these Officers could exercise power as Sub-Collectors not having any separate charge in their District, and also because it might be held that the servants of the settlement Department did not come within the strict definition of the present law against Revenue malversation, that law being confined to persons on the Collector's establishment. It was certainly not right that persons who had been guilty of acts, of the real criminality of which they could not possibly have been ignorant, should evade punishment on merely technical grounds, and their case would be provided for by the adoption of the last of the new Sections.

With these remarks he begged to move the addition of the following Sections:—

"Any Deputy Director of Revenue Settlement being a Sub-Collector and Joint Magis-

trate shall be competent to exercise within the District within which he shall be employed any of the powers ordinarily exercised by a Sub-Collector and Joint Magistrate within his charge, provided however that such Deputy Director shall only have cognizance of cases and offences connected with the duties of the Survey or the Settlement Department. In cases coming under Regulation IX. 1822 of the Madras Code tried before a Deputy Director under this Section, the power of control and revision provided by Clause 3, Section 111, Regulation VII. 1828 of the same Code shall be exercised by the Director of Revenue Settlement.

"All servants of the Survey and Settlement Departments shall be subject to the provisions of the said Regulations IX. 1822 and VII. 1828 of the Madras Code, and those Regulations apply to the Survey and Settlement Departments in the same way as they apply to the ordinary Revenue Department.

"The provisions of the two preceding Sections shall apply to all cases not finally decided at the time of the passing of this Act."

The Sections were severally carried.

The Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported.

UNIVERSITIES.

SIR BARTLE FRERE moved that the "Bill for giving to the Universities of Calcutta, Madras, and Bombay the power of conferring Degrees in addition to those mentioned in Acts II, XXII, and XXVII of 1857" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

SUCCESSIONS.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons" to the Governor General for his assent.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. FORBES moved that Mr Harington and Sir Mordaunt Wells be added to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the settlement of Prince of Wales' Island, Singapore, and Malacca").

Agreed to.

REGISTRATION OF ASSURANCES.

MR. FORBES moved that a communication received by him from the Madras Government, be laid upon the the table and referred to the Select Committee on the Bill "to provide for the Registration of Assurances."

Agreed to.

The Council adjourned.

Saturday, June 23, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq.,
H. B. Harington, Esq.	and Hon'ble Sir M. L. Wells.

INCOME TAX.

THE CLERK presented to the Council a Petition of proprietors of permanently settled estates in Bengal, Behar, and Orissa against the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

MR. WILSON moved that the above Petition be printed.

Agreed to.

TRANSPORTATION OF CONVICTS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "relating to the transportation of Convicts."

EMIGRATION TO NATAL.

SIR BARTLE FRERE moved the first reading of a Bill "relating to emigration to the British Colony of Natal." It was in its details similar

lar to the other Emigration Acts passed by the Council, the only difference being as to the length of time allowed for the voyage. It had been brought to the notice of Government that a person had arrived from Natal in view to carry out Emigration to that Port in the event of the Council consenting to pass this Bill. It was therefore his intention at a later stage to move for a suspension of the Standing Orders, so as to give the Bill as early effect as possible. He did not think that there was any likelihood of any discussion arising upon it, as the Bill was so nearly identical with former enactments.

The Bill was read a first time.

EMIGRANT VESSELS.

SIR BARTLE FRERE, in moving the first reading of a Bill "relating to vessels carrying Emigrant Passengers to the British Colonies," said that it was simply to allow a reduction in the quantity of fresh water in the case of vessels adopting the use of Normandy's apparatus for distilling sea water.

The Bill was read a first time.

BOUNDARY MARKS (FORT ST. GEORGE.)

MR. FORBES moved that the Bill "for the establishment and maintenance of Boundary Marks, and for facilitating the settlement of Boundary disputes in the Presidency of Fort St. George" be read a third time and passed.

The Motion was carried and the Bill read a third time.

ARMS AND AMMUNITION.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed."

Agreed to.

Sections I to X were passed as they stood.

Section XI provided as follows:—

"Licenses granted under this Act shall be in force for one year from the date thereof, and the holders of such licenses shall give notice to the Magistrate in writing, at least twenty-one days before the expiration of the current license, of their wish to renew the same."

After a verbal amendment on the motion of Mr Harington, namely, the substitution of the words "under Section VI of this Act" for the words "under this Act"—

SIR BARTLE FRERE moved the omission of the provision in this Section, that holders of licenses should give notice to the Magistrate in writing of their wish to renew such license twenty-one days before the expiration of the current license. There was no penalty provided if no notice were given. There was no apparent reason why written notice should be required, and the provision could only tend to render the operation of the Act more vexatious.

MR. HARINGTON observed that the provision objected to had been introduced chiefly with a view to the convenience of the public; in other words, to give time for the renewal of licenses before they expired; but he was quite willing that the provision should be struck out if it was not deemed necessary or advisable to retain it.

The Motion was agreed to, and the Section, as amended, then passed.

Section XII provided as follows:—

"Any person purchasing any arms of the description mentioned in Section V of this Act, or any percussion caps, sulphur, gunpowder, or other ammunition from, or having any such arms repaired by any person in whose shop or usual place of business a board inscribed as aforesaid is not stuck up, shall be liable to a fine not exceeding one hundred Rupees."

The Section was amended on the motion of Sir Barnes Peacock, so as to run as follows:—

"Any person knowingly purchasing arms of the description mentioned in Section V or any percussion caps, sulphur, gunpowder, or other ammunition from any person not licensed, shall be liable to a fine not exceeding one hundred Rupees."

Section XIII was passed as it stood.

Section XIV provided as follows:—

"The Magistrate or other Officer authorized by Government as aforesaid may at any time enter the premises in which arms, percussion caps, sulphur, gunpowder, or other ammunition shall be manufactured, or kept by any licensed manufacturer or dealer in arms or percussion caps, sulphur, gunpowder, or other ammunition, in order to inspect the stock-in-trade of such manufacturer or dealer, and if any such manufacturer or dealer shall intentionally conceal from such Magistrate or other Officer as aforesaid any part of his stock-in-trade, or shall wilfully refuse to point out where the same is kept, he shall be liable to a fine not exceeding five hundred Rupees, or to imprisonment with or without hard labor for a period not exceeding two years, or to both fine and imprisonment, and all the stock-in-trade belonging to such person may be seized, and shall be confiscated if the Magistrate shall so adjudge."

MR. SCONCE said, he did not think the words of this Section sufficiently explained the grounds upon which the Magistrate could punish a person for wilfully refusing to point out any part of his stock-in-trade. A Magistrate might rely merely on the supposed concealment of arms or on the refusal to give them up; and he thought that the obvious purpose of the Section would be better attained if, after the word "liable" in the 17th line, the words "on the proof of the concealment of the same" were introduced.

THE CHAIRMAN said, he saw no necessity for the amendment. He did not think that any Magistrate could convict a man of wilfully refusing to point out where any part of his stock-in-trade is kept, without proof of the concealment of the same.

MR. SCONCE said, he proposed this amendment with reference to the mode in which, as was notorious, the disarming Sections of the present law were enforced in the Upper Provinces. There persons were punished, not on the discovery of arms wilfully concealed, but in order that they might produce arms. Thus, assumed concealment was constituted a crime.

MR. HARINGTON said, it was impossible to define the amount of proof which should constitute sufficient evidence of guilt. But he had no objection to the insertion of the words, if they were considered necessary.

MR. SCONCE begged to explain it was not his object to declare that proof should be required before conviction, but to define clearly the crime of which proof was required.

THE CHAIRMAN thought it was objectionable to legislate on principles of this sort. If it was necessary to deal with a case of this kind, it would be far better to pass a general law laying down that no Magistrate should convict without proof; but he saw no reason why in this Clause of this Bill, and not in any other law, such a provision involving so dangerous a principle as that the Legislature could be supposed to intend that a conviction might take place without proof, should be introduced.

SIR BARTLE FRERE observed that, while he quite agreed with the Honorable and Learned Vice-President as to the proper course to be pursued if Magistrates acted in the unjust and illegal manner described by the Honorable Member for Bengal, he nevertheless thought there was some force in the Honorable gentleman's objection to the words as they stood. It seemed to him (Sir Bartle Frere) that the words would justify a Magistrate in punishing a dealer who refused to point out where arms &c. were kept, and which the Magistrate might have strong reasons to believe were kept on the premises, though he might be unable to find them himself. This was not, he supposed, intended, and he thought it would be better to alter the words so as to make it necessary that the concealment of the arms should be clearly proved before the penalty for refusing to point them out was enforced.

THE CHAIRMAN thought the words were sufficiently clear as they stood, and the subject was not pressed.

SIR BARTLE FRERE pointed out that the words in this Section, authorizing the seizure and confiscation of "all the stock-in-trade" belonging to any one who had concealed arms or ammunition, might operate far more extensively than was probably intended by the framers of the Bill. He concluded it was intended to give power to confiscate all arms and ammunition of such dealer, but as the words stood they would authorize the confiscation of the whole stock-in-trade

of any miscellaneous dealer, such as those so common up-country, who, among mess stores and other goods, might deal occasionally in guns or pistols, and neglect to take out a license. This could never have been intended, and he therefore recommended that the words should be limited so as to render arms and ammunition only liable to confiscation.

SIR. MORDAUNT WELLS thought it would be sufficient to follow the course pursued by the excise law at home with regard to smuggled articles. In England if a general dealer were found in the possession of smuggled tobacco his whole stock of tobacco would be confiscated; but the sugar, tea, or other articles, besides tobacco, would be left alone.

THE CHAIRMAN said, he did not think, if the stock-in-trade of a man carrying on an illicit trade in arms and ammunition consisted of other articles, that those other articles ought to be confiscated.

MR. FORBES said, as the Section now stood, the whole stock-in-trade of a dealer was liable to confiscation. Some shop-keepers, such as Charles Nephew & Co. for instance, who sold arms and ammunition, also sold other valuable articles.

THE CHAIRMAN then moved the substitution of the words "any arms, percussion caps, sulphur, gunpowder, or other ammunition" for the words "all the stock-in-trade" near the end of the Section.

The Motion was carried, and the Section, as amended, then passed.

Sections XV to XXIII were passed as they stood.

Section XXIV provided as follows:—

"No person shall go armed with or carry any arms of the description mentioned in Section V of this Act, unless he shall have obtained a license from a Magistrate or other Officer authorized by the Governor-General of India in Council, or the local Government to grant such license, authorizing him to carry arms; and if any person shall go armed or shall carry arms without such license, and shall fail to show that he is exempted by Government, or give reasonable proof of his being otherwise exempted, he shall be liable to a fine not exceeding one hundred Rupees. Any Magistrate, Joint-Magistrate, or Deputy Magistrate, or Assistant to a Magistrate, may disarm a person going armed or carrying arms without a license, or not exempted as above."

MR. SCONCE moved the omission of the last Clause in the Section. He thought it quite unnecessary to empower a Magistrate, Joint Magistrate, Deputy Magistrate, or Assistant to a Magistrate to take away a gun from a person simply because he had no license in his pocket. The preceding Section already authorized any Magistrate, Deputy Magistrate, Assistant to a Magistrate, Police Officer, or any other person to apprehend without warrant, and to detain in custody in view to his being dealt with according to law, any person found carrying arms &c. under circumstances affording just grounds of suspicion that the same might be used for any unlawful purpose dangerous to the public peace; and was quite sufficient to secure the maintenance of the public peace without the necessity of summarily empowering Magistrates to stop any quiet person on the road.

MR. HARINGTON said, the following words, which were in the present Act, and to the insertion of which he should not object, would probably meet the objection of the Honorable Member for Bengal—

"If in the judgment of such Magistrate or other person as aforesaid it is dangerous to the public peace to allow such person to go armed."

SIR MORDAUNT WELLS said, he entertained a decided objection to this Section as it applied to Europeans. Before he entered upon that subject he wished to call the attention of the Council to the radical change which had been made in the Bill by the Select Committee. Section V Act XXVIII of 1857 was simply as follows:—

"In any district or place to which the provisions of this Section shall be extended by order of the Governor General of India in Council, or of the Executive Government of any Presidency or place, if any person goes armed with any such arms as aforesaid, and shall not produce a certificate from a Magistrate or other Officer authorized by Government to grant licenses to go armed, that he has obtained such a license, or that he is

exempted by Government from the foregoing provisions, or give reasonable proof of his being otherwise exempted from the said provisions, he shall be liable to be disarmed by any Magistrate, Deputy Magistrate, or Assistant to a Magistrate, or by any European Commissioned Officer in the service of Her Majesty, or of the East India Company, or by any Member of a Volunteer Corps enrolled by authority of Government whilst on duty, or by any Police Officer, if, in the judgment of such Magistrate or other person as aforesaid, it is dangerous to the public peace to allow such person to go armed. Provided always that if any person shall have a license from the Magistrate of the district or place at which he resides or may be, to carry on a journey such arms as the Magistrate may consider reasonable for his private use, and shall obtain from such Magistrate a certificate stating the name and address of the licensee, the route by which he intends to proceed, the time which such journey is expected to occupy, and the Arms which he is permitted to carry, such certificate shall have the same force and effect according to its tenor in every district or place specified therein as if leave to go armed had been granted by the Magistrate of such district or place."

Before addressing himself to the question as to whether a Clause like Section XXIV of this Bill ought to be applied to Europeans or not, he wished to observe that Section V Act XXVIII of 1857 went sufficiently far as regarded Europeans as well as Natives, for he did not wish to see even respectable Native Gentlemen, such as the Rajah of Burdwan and others, unnecessarily harassed by the provisions of such an Act; such loyal Native Gentlemen might, he thought, be allowed to carry their rifles without danger to the public peace. Section V Act XXVIII of 1857 imposed no fine, but left it to the discretion of the Magistrate to disarm any person found going armed, if in the opinion of the Magistrate it was dangerous to the public peace to allow such person to go armed; but this Section XXIV imposed a penalty of one hundred Rupees upon every gentleman in India who carried his rifle, unless he took out a license, for which, under Section XXX, he would have to pay one Rupee. There might not be a Magistrate within reasonable distance to whom to apply for a license. Then with regard to Europeans, he should like to know whether in Canada, Australia, the Cape of Good Hope, or in any other British possession such a law would be tolerated; that is, not only that the right of any Englishman to carry arms should be restricted, but that he should have to pay one Rupee for the privilege. Fancy an English gentleman having to pay a Rupee for the privilege of carrying a rifle or a gun, a privilege which he claimed as a right wherever he went. As he had already remarked, Section V Act XXVIII of 1857 was quite sufficient even as regards the respectable and loyal portion of the native community, and that Clause was probably prepared with great care. Upon what grounds, he would ask, could the change now proposed be justified? Did the conduct of the Europeans during the mutiny, when the life of every European in the country was in jeopardy—and there could be no doubt that on that occasion it was a struggle on the part of the native races to exterminate Europeans in this country—did the conduct of the Europeans afford any justification for the change? Were Europeans to be deprived of their arms, when they not only took no part in this Mutiny, but on the contrary assisted in its suppression? The measure would be no hardship to the natives, but would be otherwise to the Europeans, as 99 out of a 100 of them were in the habit of using their rifles for the purpose of sport and amusement. He might adduce more than a hundred arguments to show how essential it was that such a restriction should not be extended to Europeans.

On what ground then was the measure based? Was it on the ground of expediency? Was it on the ground of equality? There was no equality, as late events had shown, when Europeans had to defend their very lives against hordes of natives. It was not, he contended, a matter of English feeling—it was a matter of strict justice. He was not sitting there as a representative of any class, but he considered it was his duty to express his opinions openly and fearlessly. In legislating he would take care that no injustice was done to any class, and

he would support any measure which he considered consistent with his duty as a Member of this Council. There could be no equality in treating Europeans, of whose loyalty there never was any suspicion, on the same terms, with regard to this question, as natives. It had not been shown by the Honorable Mover of the Bill that this measure had emanated from the Executive Government, and he would ask the Right Honorable Gentlemen and the Honorable Member of the Council opposite (Sir Bartle Frere) on what principle they were prepared to say that it was important to alter the law as regards Europeans. It might be said that a disarming Act was one time passed in Ireland: but what was the state of the country? It was very different from this at that time. A large portion of the Christian population were disaffected, and showed a rebellious spirit, and it was found necessary to disarm them; but had the Europeans in India done a single act which called for the passing of such a law? The only reason for the change, as far as he could understand, was that there had been many cases of acts of violence committed by Europeans up the country. Now, since he had been in the country, cases of the kind had come before him in the Supreme Court, but not one of them afforded the slightest ground that, for the protection of the public peace, Europeans should be deprived of their arms. Acts of violence were, no doubt, greatly to be deplored and should be severely punished. But what were the cases referred to? Why, they were attacks made upon natives by Europeans, who in assaulting them neither used fire-arms nor swords, but either a whip, or kicks or blows.

MR. HARINGTON here asked the speaker, if he did not remember the case of the Sergeant in Oude who was tried for shooting a native.

SIR MORDAUNT WELLS said, he did not remember the case. It was not in his time, but he was obliged to the Honorable Member for mentioning the case, as it just reminded him of another ground why he should claim the exemption. The prisoner was a Military man, and the Act exempted those who used arms for the public service, so that soldiers were allowed the privilege of carrying arms. Surely the Honorable Member did not expect that the soldier would be made, after his parade was over, to lock up his musket in a godown. He would again repeat, and he said so deliberately, that the cases mentioned did not afford the slightest justification for the enactment. He had expressed his opinion freely, not from any feeling of partizanship, but rather as an Act of simple justice towards his European countrymen. He had the same feeling for the loyal natives, and would very much wish to see that they should also be excluded. He wished to see justice done, but was injustice to be done from a feeling of timidity? He regretted very much that this question had not been considered seriously by the Government.

The foregoing remarks applied to Section XXIV as well as Section XXX prescribing a fee for license, Section XXXV providing for imprisonment if fine be not paid, and Section XXXVI regarding rewards to informers. He concluded by moving as an amendment the insertion of the following Clause:—

"Nothing in this Act shall extend to Europeans or Americans."

MR. HARINGTON said, when he brought in the present Bill he had the honor of a seat in the Supreme Government, and it was in his capacity of a Member of the Government of India that he introduced the Bill with the full concurrence of His Excellency the Governor General, and the other Members of the Government; no doubt he was now carrying on the Bill as a Member of the Legislative Council only, but this was in accordance with the custom of the Council, which was that the Member who brought in a Bill should ordinarily continue in charge of it until it passed into law. Had the Bill been sent to him by the Government of the North-Western Provinces for the purpose of being introduced, he should have deemed it

right to consult the Executive Government before bringing it in. He considered that all Bills of this nature which involved important principles, and were of general application, ought to be introduced with the consent of the Executive Government, and he believed this to be in accordance with the intention of the Act of Parliament under which this Council was established. He trusted that what he had said would satisfy the Honorable and learned Judge, as to the manner of the introduction of the present Bill.

He (Mr. Harington) thought that the Honorable and learned Judge would have done well to have made himself acquainted with the history of Act XXVIII of 1857 before delivering the speech which they had just heard from him. Had he done this he would have found that when that Act was first brought before the Council the Honorable Member, by whom the Bill was introduced, and who was at the time the Vice-President of the Council and a Member of the Executive Government, distinctly raised the question as to whether the Bill should apply alike to Europeans, Americans, and Natives, or whether it should be confined in its operation to Natives alone. The Honorable Member said :—

"It was a question for consideration whether several further exemptions might not be made, whether any particular class or classes of persons should not be exempted. But to him it appeared that it would be inexpedient to make any special exemption of this nature He was perfectly satisfied that there were many Sections of the community who could be trusted by the Government with the possession of arms without being subjected to the necessity of taking out licenses. All Europeans, our East Indian brethren, many educated Native gentlemen, and (he believed he would be supported by the Honorable Member for Bombay in adding) the Parsee gentry and Community, might, he was quite sure, be allowed unrestricted possession of arms without any danger to the State. Other Sections of the general Community might be added. But it appeared to him that, in a measure of legislation like this, it would be difficult to exempt particular classes without appearing invidious and exciting ill-will; and, accordingly, he had made the Bill applicable to all, merely reserving to the Governor General in Council (by Section VI.) the power of exempting from its operation any persons or classes of persons whom he should think fit."

He (Mr. Harington) had looked very carefully through the debates which took place on the Bill as it travelled through its several stages, and which were unusually numerous, the Bill after passing through a Committee of the whole Council having been re-committed twice, but he had failed to discover in any thing that fell from Honorable Members in the course of those debates, the shadow of an attempt to exempt Europeans from the operation of the Bill generally, or from any Section in particular, nor was there a word in any of the speeches which had been made which by any latitude of construction could be construed into a dissent from the views expressed by the Honorable Member who brought in the Bill in the part of the speech which he had just read to the Council. Surely then he was justified in assuming that those views were concurred in by the Honorable and learned Vice-President and the other Members who then sat in the Council. It appeared to him that what he had just stated was entitled to much consideration, for if there ever was a time in the history of India since it came under British rule when the exemption, now asked for in favor of Europeans, could properly have been allowed, it was when the Bill to which he was referring was introduced. The Bill was read a first time on the 1st August 1857, and he would ask Honorable Members to go back to that date and to call to mind what was then the state of the country. Delhi had not yet fallen. Every one trembled for the fate of the brave men and women who composed the illustrious Garrison of Lucknow. The gallant Havelock had not succeeded in his attempts to release that illustrious Garrison. The whole country from Cawnpore to Meerut and far away to the South-west was in the hands of the rebels. European life was no where really safe, and, yet, in the face of all this, the Council passed the Act, now in force, without making any distinction in favor of Europeans. Then on what ground he would ask, could such a distinction be made now?

SIR MORDAUNT WELLS here remarked that Act XXVIII of 1857 was a temporary Act only.

MR. HARINGTON resumed. The Honorable and learned Judge was quite right. Act XXVIII of 1857 was a temporary Act only; but so far from the temporary character of the Act affording any ground in favor of the exemption now contended for, it appeared to him (Mr. Harington) to tell just the other way. The two years during which it was originally provided that Act XXVIII of 1857 should remain in force were just the very years when, looking to the state of the country, European life would most probably be in the greatest danger, and would most require the protection of arms. Yet, as he had already noticed, this Council did not think it proper to exempt Europeans by express words during those two years from the operation of the Act, and *a fortiori*, it appeared to him that such exemption could not properly or consistently be introduced into the Bill before the Council. It was well known that the number of Europeans of the lower orders in India was daily increasing, and that large numbers of these men were finding their way up the country in the employment of the Railway Companies or of other private companies or individuals, and what was infinitely worse, without any employment at all. These men were for the most part quite ignorant of the language, character, and habits of the people. They looked upon themselves as the dominant race, and they were encouraged to do so. They held native life very cheap, and they considered that they were at liberty to treat the natives pretty much as they pleased. He thought that Honorable Members would agree with him that these men should not be allowed to carry loaded revolvers and other arms into their daily work, and whenever they liked, without the Magistrate having any power of interference. See, how differently the Legislature had acted in the case of the Presidency Towns. Let them turn to Section XLVII Act XIII of 1856. What did that Section say?

"Whoever (not merely 'any native,' but 'whoever' be he European or be he native) not being a soldier or sailor in the Army or Navy of the Queen or the East India company, or a Police Officer, goes armed with any sword, spear, gun, or other offensive weapon, in any street, thoroughfare, or public place unless by leave of the Commissioner of Police, shall be liable to be disarmed by any Police Officer; and the weapon so seized shall be forfeited to the Government unless redeemed by payment of a fine at the discretion of the Commissioner not exceeding ten Rupees."

Here they had no exceptions, no exemption of this class or of that class, but a law of general application; and why was this, for the simple reason that no distinction could properly have been made. Then why was there to be a different law as soon as the Mahratta ditch was passed? He had never heard of any objection being made to the Section which he had just quoted, on the ground which the Honorable and learned Judge objected to the Section before the Committee. Was the maintenance of the public peace, he would ask, of less importance at Burdwan or at any other Mofussil station than it was in Calcutta. In considering these remarks he would beg the Council to keep in mind what he had just said on the subject of the large influx of Europeans into India and the number going Up-country. He willingly admitted that it was the duty of the Government to make a law of this kind as little harassing and vexatious to the people at large, and he had no objection to say to Europeans in particular as was possible consistently with the object in view, and this was what the Select Committee had earnestly striven to do. No interference was proposed with the mere possession of arms and ammunition, unless the Magistrate should have reason to believe that they were being kept or collected for any unlawful purposes, or that their retention by the person in whose possession they were, was dangerous to the public peace. The written notice of the possession of arms and the general search authorized by the present law were discontinued, and any person might be exempted by the Government

from the operation of the Section relating to the carrying of arms, or by paying a rupee he might obtain a license to carry arms for a whole year. He could not suppose that any respectable European would object to the payment of this small fee, nor did it appear to him that there would be any thing more derogatory in taking out a license for carrying arms in this country, than there was in taking out a game license at home where no man could shoot a hare crossing a common without such license. With regard to the penalty prescribed in the Section, to which the Honorable and learned Judge objected, it was intended chiefly for the natives, and the object was to prevent them from evading the law, and thereby to make the law more effectual. Still if the majority of the Council considered the penalty objectionable he was not prepared to press its adoption.

He trusted that after what he had said, the Honorable and learned Judge would allow the Section to pass.

SIR BARTLE FRERE, while agreeing generally in what had fallen from his Honorable friend the Member for the North-Western Provinces, thought he had omitted to point out sufficiently clearly that this Act was not intended as a Penal Act, nor was it intended, like the Act now in force, and which it was meant to supersede, to effect the summary disarmament of a large armed population. That Act (XXVIII of 1857) was passed at a time of great danger, and was necessarily more strict and summary in its provisions than this, which was intended simply as a measure of ordinary and permanent police management. To maintain order and suppress crime among a population, the persons composing which are habitually and generally armed, is of course very much more difficult than among a population which is habitually disarmed, and there is of course an important Fiscal object at stake, because the existence of a large armed population renders necessary an armed police, and a large Native Army, which can to a considerable extent be dispensed with, if you have only an unarmed population to manage.

Regulations of this kind, though comparative novelties on this side of India, had been long in force in many parts of Western India. One of the first measures of Sir Charles Napier in Sind was a proclamation forbidding persons to carry arms without license. He allowed no search for arms, but simply directed the Police to disarm all persons carrying arms, and occasionally persons offending against the Police regulations in this respect were fined. It was in fact a system very like that proposed in this Section. The effect of this simple measure was such, that in a few years the arms had almost entirely disappeared; they had been sold or disposed of, and very few were to be found when there was a call for them to arm local levies in 1857 and 1858. Of course this made an immense difference in the force required to keep such a population in order. It was this object and not any penal object which the Bill aimed at. He could not agree with the proposal of the Honorable and learned Judge to exempt Europeans. As he had said the Bill was not a Penal Bill which would, he trusted, dispose of the Honorable and learned Member's objections, as far as they referred to any indignity or hardship in refusing to allow men to go about armed. But exemption was claimed for Europeans as a class. Now what were the alleged grounds and what would be the effect of granting such class exemptions? He (Sir Bartle Frere) could not answer for other Members, but judging from his own experience, he confessed he was frequently reminded by his own feelings that we come of a very irascible race, prone to get angry and to be guilty of assault and battery to an extent unusual among other races. There was no denying this fact, which every one knew, no race in the world knew better how to use such weapons as nature gave them, or were better able to defend themselves under the greatest disadvantages. This had been repeatedly shown of late years, and would be shown again should occasion ever

arise. It was difficult therefore to find any section of the community for whose exemption as a class from any such Police regulation fewer good reasons could be shown Then as to the alleged difficulty of carrying arms for necessary purposes, when really required for safety or recreation, had any difficulty been found by Europeans of all classes and professions during two and a half years under the present law, which is so much more stringent than this Bill before the Council? No body pretended that any such difficulty existed. Every one who really required to carry arms could obtain permission to carry them, and there was not a pretence of any real practical difficulty.

The great objection to any such exemption was the objection to class exemptions of every kind. Supposing we acted on the principle among ourselves, and enacted that all of certain classes, respectable Shop-keepers, Officers of the Army and Navy, Barristers, Clergymen, Civil ans, should be allowed to carry arms, but discharged Soldiers and Sailors, and people who have no visible means of living, should not? Would any one tolerate such legislation? No doubt, as a matter of fact, it might be said that the favored classes might to a man be trusted with arms, and among the proscribed classes would be found many loafers and dangerous characters, but would not common sense and common justice condemn any such attempt at class legislation?

But there was a stronger reason. Such class exemptions, unjust to all, were most injurious to the exempted class. All such exceptions were curses, which clung like the poisoned garment to the limbs of the demi-god, eating into the flesh and causing a canker which nothing could remove. We could see this plainly enough in other nations wherever a race of conquerors had such privileges of bearing arms or of any other character, such privileges were invariably a curse rather than an advantage. We were never tired of inculcating this on nations in which slavery prevailed. We were convinced of it ourselves, and were, as we flattered ourselves, fast persuading other nations to agree with us. The principle in all these cases of class privileges and class exemptions was the same, and he (Sir Bartle Frere) believed we could not make a more fatal gift to our countrymen than by conferring such privileges on them. This was not a speculative opinion. He had very lately met the case of a gentleman who had bought land in the Hills and wished to get a European, a steady experienced man, to manage his estate. But when he found that the man would be practically exempt from all law, that whatever he did it would be difficult to deal with him except by sending him to Calcutta, he broke off his negotiation, and declined to employ the man. He would have been glad to have an honest Englishman for his servant, but he shrunk from employing a man who would be practically free from all restraint of law. The Government was most anxious to do all in its power to promote the settlement in this country of as many Europeans as could make a fair livelihood in it, convinced that they would add greatly to the strength of the Government and to the resources of the country. The way to encourage them was not by making special exemptions in their favor, but by improving our administration, so that we could reasonably expect them to live under the same laws as their fellow subjects. He would go heartily with his Honorable and learned friends in all such reforms, but he trusted the Council would pause before they granted exemptions, which would, he felt convinced, be most injurious to the true interests of those it was intended to favor.

MR. FORBES wished to say a few words to the Committee on two points, one the general objection that had been taken to a disarming Act as a new law unknown before the Mutiny, and which should therefore cease when the Mutiny had died out; and the other regarding what had fallen from the Honorable and learned Judge opposite, as to the fact that since he had sat on the bench of the Supreme Court, no European had been tried for any act of violence com-

mitted with any of the weapons referred to in the Bill.

If the Committee would refer to Act XXIV of 1854, they would see that that law was passed to prohibit the use, in Malabar, of a war-knife or any similar weapon: to call upon all possessed of such weapons to deliver them up to the Magistrate, and to subject to fine and imprisonment all who should, after the passing of the law, retain possession of such weapons.

With reference to the Honorable and learned Judge's remark that no European had been charged of late before the Supreme Court for any act of violence, committed with any other weapon than a whip or a stick, or with assaulting otherwise than by kicks; he confessed he thought that the fact in no way established a claim for Europeans to be allowed indiscriminately to carry arms. A man might use a deadly weapon in a hasty moment without deliberation, and without any determined purpose to do serious injury, but if one man killed another with a stick, or a whip, or by kicks, which were the means stated by the Honorable and learned Judge to have been used in all the cases which had come before him in the Supreme Court, he did think that a determined purpose was developed which would make it most unwise to allow those, who from habits, from temper, or imperfect education, were given to the perpetration of such acts, to go all over the length and breadth of India in the possession of such deadly weapons as were enumerated in Section V of this Bill.

THE CHAIRMAN said, before we came to a vote upon this Bill it became necessary to consider the object of it, whether it was a Fiscal Bill, a Police Bill, or a Bill for State purposes. It could not be intended as a fiscal measure, as it had been shown by the Right Honorable Gentleman that it was not the intention of Government to raise any other taxes than those specified in his Financial Statement to the Council. Then the question was whether it was necessary for Police purposes, and whether it was necessary for the maintenance of the public peace that the Bill as it now stood be passed. After reading Section V Act XXVIII of 1857, and drawing particular attention to the words "if in the judgment of such Magistrate or other person aforesaid it was dangerous to the public peace to allow such person to go armed," he proceeded to observe that the Section now before the Council contained no such provision, so that it was hardly necessary for him to tell the Council that the Bill had undergone a very material change. The Honorable Member for the North-Western Provinces had referrred to the debates which took place in 1857, and complained that the Honorable and learned Member (Sir Mordaunt Wells) had not sufficiently studied the history of the Act which was passed at that time. He (the Chairman) might say the same thing of the Honorable Member for the North-Western Provinces, for had he done so he would have found that the Arms Bill introduced in 1857 was quite different from the Bill passed in that year. He (the Chairman) wished it to be distinctly understood that at that time he was not the Vice-President, and was therefore not responsible for what had then fallen from the chair. The Honorable Member for the North-Western Provinces went on to say that he (the Chairman) was present at the debate which took place upon the Bill which was introduced in 1857, and did not oppose the measure—but what did the Act of 1857 require? It only empowered Magistrates to take away arms from persons going armed under circumstances which might be considered dangerous to the public peace. So far was he (the Chairman) from not opposing the measure then, that when it was proposed to make it necessary for all persons to take out a license, he refused to assent to it with regard to Europeans, and he believed, in deference to the opinion which he entertained, the Bill, as amended by the Select Committee, was quite different from that originally introduced, all the provisions requiring Europeans to take out a license to possess arms having been

struck out of the Bill. The Honorable Member for the North-Western Provinces compelled him to make this disclosure by charging him with having changed his opinion. Even had he changed his opinion he denied the Honorable Member's right to twit him with having done so. But let us compare the Bill as originally brought in by the Honorable Member for the North-Western Provinces with the Bill now before the Council. The Bill as brought in merely proposed to make perpetual Act XXVIII of 1857; while the Bill now before the Council proposed considerable modifications, not in mitigation as the Honorable Member had stated, but as it appeared to him (the Chairman), in greatly increasing the stringency of that Act.

The Honorable Member of Council on the right (Sir Bartle Frere) had said that the Bill was merely a fiscal measure. Was it, he (the Chairman) would ask, to enable the Government to obtain a rupee from every person carrying arms in the country?

SIR BARTLE FRERE explained that when he spoke of this Bill as a fiscal measure he meant it only in this sense, that, to preserve order in an armed population, ou required a large armed Police and a large Native Army, whereas among an unarmed population you could do with a smaller Police and a smaller standing Army.

THE CHAIRMAN continued—That argument could be no ground for including Europeans. But this Bill would authorize a Magistrate to grant a license to a Native Rajah—and not only to a Rajah but to his followers also—to carry arms, a privilege which perhaps he might refuse to a European, and there was no appeal from the decision of the Magistrate. He (the Chairman) did not think that this was a power which ought properly to be vested in a Magistrate.

The Honorable Member for the North-Western Provinces had alluded to the license for shooting game in England. But this was only a remnant of the game laws kept up for the landed interest. There was no power to prevent any one who pleased from taking out a license in England, but here it was to be made discretionary. How was this discretion to be exercised? Upon what principle was it to be determined whether a license ought to be granted or not? The Honorable Member of Council (Sir Bartle Frere) had called exemptions a curse to the class exempted If so, he (the Chairman) would ask why the Government was allowed to throw that curse upon any person by exempting him from the conditions of the Act.

SIR BARTLE FRERE observed that his remarks applied only to exemptions in favor of classes, not of persons. Exemptions of particular persons might be fair and reasonable on account of individual character or other cause. Exemptions of classes, as classes, must always be more or less unfair and unreasonable.

THE CHAIRMAN continued. Well then why did the Lieutenant Governor of Bengal exempt Europeans as a class when the Act of 1857 was extended to Shahabad. Was that a curse thrown upon the class? [Sir Bartle Frere. I believe so.] In Pegu also Europeans were exempted. If the exemption be a curse, why should we give the Government the power of throwing that curse. In the North-Western Provinces only, where the rebellion raged to the greatest height, and where European life was most insecure, Europeans were not exempted by the proclamation by which the Arms Act of 1857 was extended to them. When we found that Europeans were exempted in some places and not in others, he thought it was the duty of this Council to take care that they should be exempted by this Act. The present Bill gave not only a European but even a Native Magistrate the power of disarming Europeans; while a drunken Soldier walking with his bayonet by his side or a Native and his followers, however disloyal and dangerous they might be, could not be disarmed if they had obtained a license.

The Honorable Member for Madras had remarked that this Bill was nothing

new, and had referred to the Mopla Act as a precedent. But that Act prohibited the carrying of arms altogether, whereas this was a Bill for licensing the carrying of arms. Besides there was no similarity between the Moplas for whom that Act was intended, and the Europeans and others who were to be affected by this Bill.

MR. FORBES begged the pardon of the Honorable and learned Chairman, and said that he in no way whatever connected Europeans with the Mopla Disarming Act. He spoke on two separate and distinct points—one, the general question of disarming, and the other the remark of the Honorable and learned Judge (Sir Mordaunt Wells), that in all the cases tried by him, since he occupied a seat on the bench of the Supreme Court, of Europeans committed for acts of violence, the violent acts had been committed with sticks or whips, or by kicks. It was in regard to the general question of disarming that he referred to the Act of 1854, and in no respect did he connect it with the question of including Europeans in this Bill.

THE CHAIRMAN continued The Honorable Member for Madras had also instanced the case of a European who had kicked a man and committed a violent outrage upon him. But an Arms Bill was not a remedy for such evils, inasmuch as one man could not be prevented from kicking or knocking down another by a licensing Bill; no more could the payment of a fee make him use his licensed weapon properly. But such a restriction would in the present state of the country be most unjust to Europeans. The Act of 1857 was sufficiently stringent as a temporary measure, and he saw no reason for the introduction by the Select Committee of more stringent clauses into what was intended to be a permanent Bill. Then again, if any exception was to be made, it ought to be made by this Council; and as it appeared that in every case—except in the case of the North-Western Provinces—when Act XXVIII of 1857 was extended to any province, Europeans as a class were exempted from its operation, he saw no reason why the Council in now passing a general Law could not make a like exemption in express terms. It should not be overlooked that Act XXVIII of 1857 was not an Act of general application, and applied only to those districts to which it was extended by the Executive Government. The present Bill however was intended to be a permanent measure applicable to the whole of India without any exception; and if any exemption was necessary it ought to be made by this Council—not left to the discretion of the local Governments.

With reference to what had fallen from the Honorable Member for the North-Western Provinces as to the position of the Members of this Council, he (the Chairman) wished to say a few words. By the Charter Act of 1833 the power of making laws and regulations was vested in the Governor General of India and his Council consisting of four Members. The Act of 1853 only made an addition of certain Members to the Council for the purpose of assisting at meetings for making laws and regulations; it made no difference whether the Council consisted of four or more Members, or whether it sat with closed or open doors. Every Member was bound to decide and advise according to the best of his judgment, whether he was a Member of the Executive Council or a Member of the Legislative Council. He (the Chairman) should always feel it his duty to express his honest convictions as long as he had the honor of a seat in this Council.

MR. WILSON said, he entirely agreed with the Honorable and learned Chairman in his description of the duties and functions of the two Councils. He further agreed with him that it was not only desirable but it was also our duty to make our laws as complete and perfect as possible, and to leave nothing, not absolutely necessary, to the discretion of the Executive Governments. It was necessary, however, in a country like this, where there was so great a diversity of races, to leave a discretionary power in the hands of

the Government. The discussion which had taken place on the present Bill had been somewhat of a discursive character. His Honorable and learned friend (Sir Mordaunt Wells) had raised no question as to the policy of this Bill. He had raised no question as to whether the discretion proposed to be vested in the Government of exempting any persons which it might think fit to be allowed to carry arms was right and necessary. But the simple question which he had raised was whether the restriction to carry arms should be extended to Europeans or not. He (Mr. Wilson) however should have expected larger and more liberal views from his Honorable and learned friend. We were here as Members of a Legislative assembly legislating for the largest community of British subjects in the world, and he put it to his Honorable and learned friend whether we could, on any principle of justice, make the distinction proposed by him by granting privileges to one class and not to another. Such a distinction would be in direct contravention of the Queen's proclamation. If he understood that proclamation to aim at one thing more than another, it was to make the whole of India one body politic. The Native community represented the ninety-nine hundredths of the entire population in India. Knowing the ardent and generous temperament of his Honorable and learned friend, and the liberal views he had held in England, he (Mr. Wilson) little expected that he would deliberately raise such an issue in this Council by taking exception to equal legislation, and by proposing the insertion of a Clause in this Bill to grant exemption in favor of Europeans only. His Honorable and learned friend however, knowing that he had a very weak cause to defend, had, in the course of his argument, referred to the Irish Arms Act. But he (Mr. Wilson) fully remembered the circumstances under which that Act passed the House of Commons. The disaffected portion of Ireland consisted of a single class, the Roman Catholics alone, and when the question arose whether the Disarming Act should be extended to the Irish Protestants, of the 106 Irish Members who supported the Bill, not one of them claimed or asked for any exemption. Would it not be acting contrary to the spirit and law of the British legislature to stamp our legislation with an exceptional character of this nature? Even supposing the distinction was necessary or desirable, was it practicable in a country like India, where there were so many shades of people? Where was the line of distinction to be drawn with regard to East Indians and persons of mixed blood? If his Honorable and learned friend wished that part of the Bill which related to the license fee and the penalty struck out of the Bill, he was sure that the Honorable Member for the North-Western Provinces would not object. The Bill was intended merely as a Police measure, and he hoped that his Honorable and learned friend would not press his amendment. He would appeal to the Honorable and learned Judge on public grounds, whether, instead of raising a narrow issue, we should not follow the example set by those Irish Gentlemen, and act in the same spirit of self-sacrifice and patriotism.

SIR MORDAUNT WELLS said, he must observe that justice had not been done to him by any one Member of this Council, except the Honorable and learned Chairman. He had anticipated that he would be misunderstood out of the Council, but he did not expect that injustice from Members of this Council. He had based his argument on former legislation; he had contended that no reason had been shown that Act XXVIII of 1857 had not been found sufficient. He had no objection to adhere to the provisions of that Act, but if the Bill were passed with the objectionable Clauses proposed by the Select Committee, he (Sir Mordaunt Wells) would oppose the Bill at every stage through which it might be attempted to be passed.

MR. HARINGTON said, he hoped the Honorable and learned Judge would excuse him for making the observation, but he must remark that he considered the Honorable and learned Judge's conduct as very extraordinary.

If he rightly understood what had fallen from the Honorable and learned Judge, he wished them to believe that the only objection which he had to the Section before the Committee was that it prescribed a penalty for carrying arms without a license, which was not in the present Act, and to which he thought Europeans generally and respectable natives should not be subjected. The Honorable and learned Judge, if he (Mr. Harington) recollected aright, went on to say that he had no desire to claim special privileges for Europeans, from the enjoyment of which respectable natives like the Rajah of Burdwan and others should be excluded Such being the case, he (Mr. Harington) would ask why the Honorable and learned Judge did not content himself with moving the omission from the Section before the Committee of the words which contained the part of the Section to which he objected. What was easier than that. But, instead of adopting this very simple course, the Honorable and learned Judge proposed to move an amendment which applied to Europeans alone, and which, making no mention of natives, they could not enjoy the benefit of it. He must repeat that he did not think that any respectable European would object to take out a license, by obtaining which he could never come within reach of the penal part of the Section, nor did he think that any objection could be urged to the small charge of one Rupee as a fee on every license taken out. There was surely nothing derogatory in the payment of a fee of this nature. In most countries fees were charged on licenses. The money was required, not as revenue, but to pay for the establishment which must be entertained for the purpose of preparing licenses and other incidental expenses. But if any respectable person objected to take out a license, the Honorable and learned Judge would find, if he looked a little further on in the Bill, that he might go to the Local Government and obtain a dispensation or order exempting him from the operation of the provisions of this particular Section. What more could be required? There could be no doubt that the desire of the Government would be that the Act should be leniently worked. On this point he would refer the Council to what had been so well said by the late Honorable and learned Chief Justice (Sir James Colvile) in a speech made by him in one of the debates on the Act now in force.

He wished to say a few words by way of reply to some of the observations which had fallen from the Honorable and learned Vice-President in reference to what he (Mr. Harington) had stated on the subject of the constitution of this Council, and of the debates which took place during the progress of Act XXVIII of 1857 through the Council. He thought that the Honorable and learned Chairman had mistaken what he had said on both these subjects. He quite agreed with the Honorable and learned Vice-President, that every Member of the Council was at liberty to bring in any Bill that he thought proper, and that every Member had a right to express his unreserved opinion upon any Bill before the Council. But the Honorable and learned Judge complained that the present Bill had been brought in by him (Mr. Harington), as Member for the North-Western Provinces, instead of by a Member of the Executive Government He (Mr. Harington) explained for the information of the Honorable and learned Judge that it was as a Member of the Executive Government and not as Member for the North-Western Provinces that he had introduced the Bill, and he then went on to state what course he should have taken had the Bill been sent to him by the North-Western Government, namely, that before moving the first reading he should have communicated with the Executive Government on the subject of the Bill, and should have ascertained the views of that Government in respect of it. Looking to the character of the Bill, he considered that this would have been the proper course for him to adopt, and that it would have been quite consistent with his duty as a

Member of this Council. On the other point he would only say that he was not dealing with the former Bill, as originally introduced, but with the Bill as it passed into law, and it was quite unnecessary for him therefore to allude to the original Bill. What he stated was that Act XXVIII of 1857 made no exception in favor of Europeans, and that in the debates on that Act not a word had fallen from any Honorable Member claiming exemption in favor of that class, and having regard to the time and circumstances of the country at the time Act XXVIII of 1857 was passed, he argued that an exception not allowed then in favor of Europeans could not properly or consistently be allowed now.

As regarded the Section under consideration, he was in the hands of the Committee, and was quite ready, if the majority wished it, to alter the Section so as to make it conform to Section V of Act XXVIII of 1857, from which it really differed little more than in the penalty which it prescribed, and which had been introduced, as he had already said, to make the Act more effectual.

Ultimately Mr. Harington moved the omission of Section XXIV and the substitution of the following corresponding to Section V Act XXVIII of 1857 :—

"If any person shall go armed with or carry any arms of the description mentioned in Section V of this Act, unless he shall have obtained a license from a Magistrate or other Officer authorized by the Governor-General of India in Council or the local Government authorizing him to carry arms, he shall be liable to be disarmed by any Magistrate, Joint Magistrate or Deputy Magistrate, or Assistant to a Magistrate, or by a Police Officer, if in the judgment of such Magistrate or other Officer aforesaid, it is dangerous to the public peace to allow such persons to go armed or to carry arms."

Agreed to.

Section XXV was passed as it stood.

Section XXVI or the exemption Clause provided as follows :—

"The foregoing provisions shall not apply to—

"Officers, Non-Commissioned Officers, Warrant Officers, Soldiers, and Sailors in the Military or Naval Service of Her Majesty, in respect of arms and ammunition kept by them for use in the public service.

"Members of Volunteer Corps in respect of such arms and ammunition.

"Police and Revenue Officers and other persons in respect of arms and ammunition furnished by Government for use in the public service, or provided by themselves with the sanction of Government for such use.

"Such other persons as the local Government may think fit to exempt from such provisions."

After a verbal amendment on the Motion of Mr. Harington.

SIR BARTLE FRERE moved the insertion of the words "Magistrate or any Officer or Superintendent of Police" after the words "Local Government" in the last Clause of the Section.

MR. SCONCE said, with the permission of the Council, he wished to state what seemed to him to be the bearing of the amended Section XXIV. The result seemed to him to be this, that any person might carry arms, and that the only limit to this discretion was the power of disarming if going armed were dangerous to the public peace. In fact, therefore, the Bill had become an arming instead of a disarming Act, and he doubted if such was the intention of the Council.

After some discussion, the further consideration of the Bill was postponed on Mr. Wilson's Motion till Thursday morning, the 28th instant, at 7 o'clock, and the Council resumed its sitting.

STAMP DUTIES.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to consolidate and amend the law relating to Stamp Duties," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. WILSON said, he promised last Wednesday night to make enquiry on the subject of transfers of shares. He had done so, and had found that there were several Companies whose shares were of very small value.

He therefore begged to move the insertion of the following Clause before the "Exemption," and after the

"Note" in Article 19 of Schedule A :—

"Transfers of the shares of any Banking Corporation or any Joint Stock Company by endorsement or otherwise—when the full nominal value of the share so transferred does not exceed Rs. 100 per share.	0	4	0
When the value exceeds Rs. 100 and not 200, per share	0	8	0
When the value exceeds Rs. 200 and not 300, per share	0	12	0.
When the value exceeds Rs. 300 and not 400, per share...	1	0	0

"And for every additional value of Rs. 100, a further duty of 4 annas.

"And for the transfer of every quarter or half of any such share a corresponding rate of duty."

The Motion was carried, and the Article as amended then passed.

MR. SCONCE moved the addition to Article 49 of the same Schedule of the following note, in adoption of the principle of Act XLI of 1858 :—

"Any deed, instrument, or writing required by the foregoing Schedule to be stamped, may be written on one or more stamps, if the value of the stamps used amount to the value required by the Schedule."

The Motion was carried, and the Article as amended then passed.

MR. HARINGTON moved the introduction of the following New Article after Article 6 in Schedule B :—

"In suits for the recovery of arrears of rent or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other suits the statement shall be written on paper bearing a stamp of the value of eight annas. No stamp shall be required in respect of the production or filing of any document, or the summoning of any witness or of any application for the execution of any order or judgment passed in a suit under this Act."

After some discussion, the Motion was by leave withdrawn at the suggestion of Mr. Wilson, with a view to its being again brought forward, if necessary, after the republication of the Bill.

MR. SCONCE moved the addition of the following Clause in Article 6 of Schedule B :—

"Petitions of plaint in suits instituted in the Courts of Collectors under Act X of 1859 shall be subject to the foregoing duties."

The Motion was carried and the Article as amended then passed.

MR. FORBES asked if some alteration was not necessary in the last Section, which provided for the commencement of the Act from the 1st of September 1860, when three of the five months when that date was fixed had now elapsed.

It was ultimately agreed that the date should remain undisturbed for the present.

The Council having resumed its sitting, the Bill was reported and was ordered, on Mr. Wilson's Motion, to be republished for one month.

KOONCH AND CALPEE.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to remove the Pergunnahs of Koonch and Calpee in Zillah Jaloun from the operation of the general Regulations."

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

BOUNDARY MARKS (FORT ST. GEORGE.)

MR. FORBES moved that Sir Bartle Frere be requested to take the Bill "for the establishment and maintenance of Boundary Marks, and for facilitating the settlement of Boundary Disputes in the Presidency of Fort St. George," to the Governor-General, for his assent.

Agreed to.

POSTPONED ORDERS.

The Order of the Day for a Committee of the whole Council on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," and the Bill "for the licensing of Arts, Trades, and Professions," was postponed.

The Council adjourned at half past five o'Clock, on the Motion of Sir Bartle Frere, till Monday the 25th instant, at seven o'clock in the morning.

Monday Morning, June 25, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,
Right Hon'ble J. Wilson,
H. B Harington Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.,
and
Hon'ble Sir M. L. Wells.

INCOME TAX.

MR. WILSON moved that the Council resolve itself into a Committee on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I provided as follows:—

"From and after the day of there shall be collected and paid for the service of the Government of India, during the term herein limited, for and in respect of the property and profits mentioned in the several Schedules contained in this Act, and marked 1, 2, 3, and 4 respectively, the yearly duty of 3 Rupees for every 100 Rupees of the annual value thereof, that is to say,

"SCHEDULE 1.

"For and in respect of the property in, and profits arising from, all lands and houses in India.

SCHEDULE. 2.

"For and in respect of the annual profits arising to any person residing in India from any kind of property whatever, whether situate in India, or elsewhere; and for and in respect of the annual profits arising to any person residing in India from any profession, trade, or employment, whether the same shall be carried on in India or elsewhere.

"And for and in respect of the annual profits arising to any person whatever, whether a subject of Her Majesty or not, although not resident in India, from any property whatever in India, or any profession, trade, or employment carried on within India.

"And for and in respect of all interest of money, annuities, and other annual profits arising to any person residing in India, or accruing and payable in India to any person, whether residing in India or not, not charged by virtue of any other Schedule of this Act.

"SCHEDULE 3.

"For and in respect of all profits arising from interest, annuities, or dividends payable in India to any person, whether residing in India or elsewhere, out of any public revenue of India.

"SCHEDULE 4.

"For and in respect of every public office or employment of profit in India, and every office or employment of profit in or under any Company in India, and upon every annuity, stipend, or pension, payable to any person residing in India, or paid in India, to or on account of any person whatever, by the Government of India, except annuities charged to the Duty under Schedule 3."

Schedule 1 being read by the Chairman—

MR. SCONCE said, he desired to take this opportunity of stating to the Council the grounds upon which he adopted this Schedule, directing his remarks especially to the estates comprised within the Permanent Settlement of Bengal, the profits of which, he entirely agreed with the Right Honorable Gentleman, were rightly brought under assessment by this Bill. He felt it to be in a manner incumbent on him, however imperfectly, to give the reasons which satisfied himself in this matter, both because of the high importance of a right decision to the proprietors of the Permanently Settled Estates, and because of the clear opinions entertained by others—some of whom it might be were not personally interested in those estates—that, in strict conformity with the conditions of the Permanent Settlement, the incomes of zemindars could not form the subject of assessment by this Bill.

Now, in the first place, he would ask the Council to look to the terms of Regulation I. 1793, which legalised the settlement of estates in Bengal. The declaration made by this law was this, that the zemindars, their heirs, and successors should hold their estates for ever at the assessment which by the Settlement they had engaged to pay: and the clear purport of this declaration he took to be that the re-assessment of the estates in question was for ever barred. Regulation I. 1793 undoubtedly was an ample and complete guarantee that no re-settlement of the estates referred to in the Law should ever take effect; but, on the other

hand, it seemed to him that the Law gave no guarantee that the proprietors of those estates should never be called upon to aid in the relief of the future necessities of this Government, by contributing according to their means or incomes. It was almost superfluous to say that no such provision was contained in Regulation I. 1793 which, he might repeat, did no more than perpetuate the Revenue Settlement which had been already executed.

But it seemed to him that the arguments relied upon to support the claims of zemindars to be exempted from the present Bill pointed more to the rights vested respectively in the State and in zemindars previous to the Permanent Settlement, than to that Settlement itself. For example, in the Petition presented to this Council by the proprietors of Permanently Settled Estates, it was stated that the revenue paid to the Government was a deduction made from the gains of landowners; and again, in the 20th paragraph of the same Petition, that the tax (that is the revenue) was taken from the landowner for all time, and was a permanent diminution of his property and capital. The right asserted by the Zemindars in these words seemed to him to go to the root of the matter. Was the revenue assessed a tax in the sense here asserted, that is, a deduction charged upon the profits or gains of zemindars and diminishing their gains to the same extent, or was it levied in virtue of a substantive and paramount title vested in the State? The Law of 1793, he thought, left no doubt on this point. Let him refer the Council first to Regulation XIX. 1793, of which the first words were these, that—

"By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every beegah of land, demandable in money or kind, according to local custom."

Here, obviously, the right to revenue from land was said to be inherent in the State, and not to be a deduction by way of a tax from the profits of the proprietors of land: and the Council would find the same fact brought out in a still stronger light in Regulation VIII. 1793. He might remind the Council that, in ordinary cases, the rule followed in framing the Permanent Settlement was to fix the revenue of each estate according to the amount received for the year or years immediately preceding: but in some cases a different mode of proceeding was provided for. It might be for example that, in some instances, the actual produce of the lands had been ascertained; accordingly, to meet such and other cases, it was provided in the 75th Section of Regulation VIII. 1793, that the assessment should be so regulated as to leave to the proprietors a provision for themselves and families equal to about ten per cent. on the amount of their contribution to Government. Taking these two Regulations together, we found both the nature and the extent of the interest of the State asserted: the title was paramount, and it amounted to eleven-tenths of the rents levied from the ryots. The words, too, in which the interest of the zemindars was described, were, it seemed to him, of peculiar significance. This interest was said to be a provision, and to be left to them after the right of the State to revenue had been satisfied. He attached much importance to a proper understanding of the relative interests vested in the State and in zemindars at the time the Permanent Settlement was undertaken, and in consideration of the view which he has just expressed, he would wish to read to the Council an extract from the Minute of Lord Cornwallis of the 8th February 1790. His Lordship observed—

"The question that has been so much agitated in this country, whether the zemindars and taloukdars are the actual proprietors of the soil, or only officers of the Government, has always appeared to me to be very uninteresting to them; whilst their claims to a certain percentage upon the rents of their lands has been admitted, and the right of Government to fix the amount of those rents at its own discretion has never been denied and disputed."

Here also then was the right of the State to revenue clearly asserted: and he might quote the opinion expressed to the same effect by Mr. Shore at the same period, who remarked that the *revenues of the land belonged to the ruling power* which, being absolute, claimed and exercised the right of determining the proportion to be taken for the State: and again that *no alienation of the land by the proprietors* or diminution of the rental *could deprive the supreme authority of its title to the revenues of the land.* Thus, whether he referred to the opinions of the Statesmen by whom principally the Permanent Settlement was completed, or to the laws enacted in 1793 to regulate the rights held under that Settlement, he derived the clearest conviction that the revenue assessed on behalf of the State was a charge payable absolutely to the State in its own right, and was not in any proper sense a diminution of the rents enjoyable by zemindars.

The Council will remember that, when the Right Honorable Gentleman first announced the intention of the Government to introduce an Income Tax Bill for our consideration, he read to us a remarkable statement made by Lord Cornwallis in the Minute above quoted, from which the Governor-General seemed to anticipate the time when some such measure as the present might have to be adopted by the Legislature. The words of the Governor General to which he (Mr. Sconce) referred were these:—

"By reserving the collection of the internal duties of commerce, Government may at all times appropriate to itself a share of the accumulating wealth of its subjects, without their being sensible of it. The burden will also be more equally distributed. At present, the whole weight rests upon the landholders and cultivators of the soil; whereas the merchants and inhabitants of the cities and towns, the proprietors of rent-free lands, and in general all persons not employed in the cultivation of lands paying revenue to Government, contribute but little, in proportion to their means, to the exigencies of the State. It is evident therefore that, varying the assessment on the land is not the mode of carrying into practice the maxim (before referred to by Lord Cornwallis) that all the subjects of a State ought to contribute to the public exigencies in proportion to their incomes: and that other means must be employed for this object."

For his own part he thought these words fully authorized the inference that the Right Honorable gentleman drew from them. It was true that Lord Cornwallis rejected the idea of supplying the future exigencies of the State by varying, that is increasing, the assessment payable by zemindars from their estates: but he added that some other means must be employed for effecting that purpose. Now what were the *other means* thus contemplated by the Governor-General? One means, among others, Lord Cornwallis himself indicated, namely, reserving the collections from the internal duties on commerce, which would bring in to the Government a share in the accumulating wealth of its subjects: and obviously such duties, which would operate as duties on consumption, would affect the wealth or incomes of zemindars as of the whole people. But one or two other points intimately bearing upon this question arose from the observations of Lord Cornwallis. Surely it was very far from Lord Cornwallis' intention to admit that the Permanent Settlement operated partially against zemindars, and that the inequality so caused must be redressed by a scheme of taxation which would exempt zemindars and reach other persons. Lord Cornwallis must be acquitted of any such intention. He undoubtedly accepted the Permanent Settlement as final. He would have no addition to it. But he held that, at a future time, when the public necessities required larger revenues, the increase must be demanded from the wealth of the whole people. Another inference he (Mr. Sconce) would just as surely draw from the same observation was that Lord Cornwallis had no intention of deciding for his successors in the Government between direct and indirect taxation. He did indeed suggest that Inland customs duties were a legitimate source of additional revenue; but surely the Governor-General had no purpose to declare that the wealth of the people should not be required to con-

tribute in a more direct form to the relief of the public exigencies.

He (Mr. Sconce) had but one more remark to make on this subject. It appeared to him that the conviction he had expressed that the proprietors of permanently assessed Estates were not legally exempted by Regulation I. 1793 from the provisions of this Bill, was thoroughly supported by another law of the same year; he meant Regulation XIX, which laid down the rules by which rent-free tenures should be held valid. In the case of a valid rent-free tenure, this Regulation provided that no revenue at all should be demanded, just as Regulation I. 1793 provided that, in the case of a permanently settled Estate no additional revenue should at any time be assessed. Both laws treated the same subject, revenue; and they treated it in the same way by barring future assessment. But no one, he apprehended, would contend that, under the provisions of Regulation XIX. 1793, the proprietors of valid rent-free tenures were absolutely exempted from liability to contribute to the general taxation of the country. Upon them, indeed, as upon zemindars, no revenue assessment could be imposed; and certainly, as would have been observed, the proprietors of rent-free lands were expressly pointed at by Lord Cornwallis as among the parties exempted from revenue assessment, and whose means in a general scheme of additional taxation it was desirable to reach.

The Schedule was then put and carried.

Schedule 2 being read by the Chairman—

MR. HARINGTON said, he rose not for the purpose of offering any opposition to this Schedule, but merely to make an observation in respect to it. The Schedule, as worded rendered the profits of all property belonging to a person residing in India liable to duty, whether the property was situate in India or elsewhere. This was also the case as regarded the profits arising to any person residing in India from any profession, trade, or employment, wheresoever the same might be carried on. The Bill, however, did not intend that where, in either of the two cases just mentioned, the profits were not received in India, they should be taxed, and he thought it would be better that this should be made clear in the Schedule, or, if there were any objection to the introduction of some words into the Schedule to remove all doubt upon the point, a proviso might be added at the commencement of the part of the Bill which contained rules for making assessments under this Schedule declaratory of the exemption of profits arising from property situate, or from a profession, trade, or employment carried on out of India, which, though belonging to a person residing in India, were not brought out to or received by such person in India. A case in point would be that of a person residing in Calcutta who had a house or a landed estate in England. If the rent or profits of the house or estate were remitted to the proprietor in Calcutta, they would be liable to be taxed under the Bill, but if they were not sent out to India, they were to be free.

MR. WILSON said, he must remind his Honorable friend, that this Schedule, as well as the other Schedules, were drawn as widely as possible. The principle adopted in the Bill was, first by the Schedules to tax every description of property, and then by special rules to make exemptions.

MR. FORBES said, he thought that Rule 23 Section XCVII already contained a provision which met the case supposed by the Honorable Member for the North-Western Provinces.

MR. HARINGTON said that, supposing the profits had been received up to the time when the present Bill came into operation, they would be liable, under the wording of the Rule mentioned by the Honorable Member for Madras, for the first year that the Act was in force, though they had not been brought out to India in that year. This he believed was contrary to what was intended, and it was in order to prevent the imposition of duty in a case such as that which he had just supposed, that he was anxious to see some words introduced to the effect stated in his previous remarks.

SIR MORDAUNT WELLS said, he was quite alive to the pressing necessity that existed for the passing of the financial measures of the Government as soon as possible. At the same time he believed that a proper and reasonable discussion on the provisions of the important measure now before the Council would have the beneficial effect of removing many objections now existing in the public mind, and he trusted the Council would not deem it an intrusion on his part if he ventured to express as succinctly as possible the views he entertained respecting the measure now under the consideration of the Legislative Council. He avowed at once that it was his intention to give his humble but warm support to the Bill for taxing incomes. He believed the measure deserved that support at his hands on its own merits. At the same time he did not shrink from stating that, having confidence in the Executive Government of India, he should not, under any circumstances, feel justified in offering a substantial opposition to the principle of the financial measure submitted to this Council by that Executive Government.

One word on the subject of a double Income Tax. He entertained a decided opinion of the soundness and propriety of such a tax, and he would briefly state his reasons.

A man paid the Income Tax at home in respect of the income he received and expended in England, because he had the benefit and protection of the laws of that country. Why did he invest his money in the Indian Funds? Simply because he could obtain two per cent more for his capital than in England: he then became materially interested in the financial state of India If it became absolutely necessary to impose an Income Tax to avert serious financial crisis, surely the possessor of Indian Government securities ought to contribute towards the tax, and after he had paid the double tax, he would still receive from one and a half per cent to two per cent more for his money than if he had invested in the English Funds. Again, it must be remembered that the proposed financial measures of his Right Honorable friend would, he predicted, within one year, from the present time, cause a considerable rise on the value of Government papers, and the discontented double Income Tax payer could then sell out at a considerable profit, and other capitalists would be found only too willing to invest their money in the Indian Funds, feeling confidence in a Government dealing out strict justice to all. He was certain it would be a great misfortune if the Home Government should yield to the importunities of those so well able to pay the tax, and who had voluntarily invested their surplus incomes in the Indian Funds.

MR. WILSON said, he entirely agreed with the Honorable and learned Member who had just sat down. He did not wish to prolong discussion, but he only wished to state for public information, that the condition of the Indian Stock showed every sign of health imaginable. This was the best evidence to show that there was no foundation for the alarm which was said to exist amongst English investors. It would be interesting to the Council to be informed that week by week large demands were being made for enfaced notes in execution of orders from England, and the average quantity of enfaced notes was five or six lakhs a week.

MR. SCONCE said, he was inclined to offer no opposition to what was called a double Income Tax. It appeared to him that what concerned them as regards the Bill before the Council was to be assured that the grounds of assessment set forth in the Schedules were sound and uniform. The words double Income Tax were not found in the Bill: but it was very important that they should have a clear impression of the operation of the Schedules, so that no incomes should be included which they intended to exempt, or exempted which they intended to include. He did not wish to anticipate discussion on Schedule 3; but as the Honorable and learned Judge who had preceded him had

referred to matters which related to that Schedule, he (Mr. Sconce) would take this opportunity of saying that since that Schedule included incomes derivable from the public revenue of India, it was desirable to distinctly pronounce how far it was intended to go: for example, as respects the loans contracted in England and in India, and with respect to the Railway Companies, for whose benefit under the guarantee the stipulated interest was paid out of the revenues of India. The guaranteed interest payable to Railway Companies was estimated at upwards of a crore of Rupees. Some of the share-holders in these Companies were in England and some here. What he wished to know was, whether the profits received by share-holders in England, who constituted nineteen-twentieths of the Companies in question, were to be taxed under this Bill.

Then as to the Assam Company, the head office was in London. The whole produce of that Company was sent to, and sold in England, the dividend was declared there. Would that also be subject to the Indian duty?

THE CHAIRMAN said that there was a wide difference between Schedules 2 and 3. He quite agreed with the Honorable and learned Member (Sir Mordaunt Wells) as to the effect of Schedule 3. He saw no reason why English profits should not be taxed. A man paid his Income Tax in England for the protection which his property enjoyed there. If he chose to bring his money into India and invested it in Indian stocks, the Indian Government was fully entitled to tax it in common with other investments in the country. If English investors were obliged to pay an Income Tax in England for the purpose of supporting the institutions of that country, the Indian Government had just as much a right in demanding of them a like duty for the support of its institutions here. It could not be said that coercion or inducement was held out to English capitalists to invest their money in our stocks, but they came with their own accord. Why then should not they contribute their portion to the State, especially in a time of emergency.

The Honorable Member for the North-Western Provinces had suggested that words should be introduced in the Schedule to make it clear that profits of persons residing in India, but not brought out to or received by them in India, should not be taxed; but the principle adopted in this Bill, as in the English Act, was to make the Schedule general, and to grant exemptions by special rules. Section XCVII Rule 23 provided that

> "The duty to be charged on any person residing in India, in respect of any interest or income arising from any property situated out of India, whether in any part of Her Majesty's dominions or not, shall be computed at a sum not less than the full amount of the actual sums which have been received in India during the preceding year, without other deduction or abatement than is herein allowed."

This Section, he (the Chairman) believed, was quite sufficient for the purpose; though, if there were any doubts as to this, the amendment would better be made in this Section than in the Schedule.

With regard to the question proposed by the Honorable Member for Bengal in respect to Railway shares, he (the Chairman) thought that so much of the profits of the Railway Companies as would remain over the five per cent. guaranteed interest would be subject to the Income Tax.

This was according to the *lex loci contractus*. If the East India Company chose to make such a contract, we could not now alter the terms of that contract.

With regard to the Assam Tea Company, he (the Chairman) thought that the whole of its profits would be taxed according to the Rules under Schedule 2.

MR. HARINGTON trusted the Committee would not suppose that he disputed the justice of the proposition, that when a person residing in India received in India profits arising to him from any property situated, or from any profession trade or employment carried on, out of India, such profits

should be taxed equally with profits made in the Cou try. In principle he th ught that this was quite right but what he was afraid of was that the Schedule might be carried beyond what was intended. Simila fears had occurred to the Honorable and learned Judge (Sir Mordaunt Wells), who had come down with words which w uld quite meet his (Mr. Harington's) objection, and remove any doubt that might arise upon the point.

The Schedule was then put and agre d to.

Schedule 3 was passed after a verbal amendment.

Schedule 4 and Section II were severally passed as they stood.

Section III provided as follows :—

"From and after the day aforesaid, there shall also be collected and paid, under the Rules contained in this Act, for the purposes hereinafter mentioned and described as local purposes, for and in respect of the property and profits mentioned in the said several four Schedules respectively, the further yearly duty of 1 Rupee for every 100 Rupees of the annual value thereof."

MR. SCONCE said, he was unwilling to trespass again upon the time of the Council, but he entertained very strong objections to this Section, and with the permission of the Council he would state them briefly. He would premise by observing that the special object of this Bill was to meet the deficit in the revenues of the country. While admitting that to be a good ground for the introduction of our Income Tax Bill, he would venture to say that that was by no means a sufficient reason for the proposal of a tax of one per cent. for local purposes. He submitted that the Council should, before giving its consent to the imposition of a tax for raising so large a revenue as would be realised by this tax, carefully consider for what object that taxation was to be imposed. His impression was that the rate proposed had been too lightly regarded, as if a tax on incomes of one per cent. was a comparatively insignificant impost In England a percentage tax was hardly attempted to be imposed. The tax was there taken by pennies, whereas a one per cent. tax was equal to a 2½*d.* tax. It should also be recollected that the Right Honorable gentleman had, in more than one of the statements which he had made to this Council, mentioned that it was not the intention of the Government to discontinue this tax even though the Income Tax might lapse in the course of five years. That appeared to him (Mr. Sconce) to be a strong reason for not anticipating, or, as he might call it, precipitating the imposition of a one per cent. tax this year. If it was to be permanent, he thought it would be time enough next year or the following year to come forward before the Council with better authority for the adoption of the measure than had at present been shown to exist. What he objected to was the indefinite character of the Bill, as it now stood, with regard to the application of this tax. Take for example this City. The Right Honorable gentleman, if he recollected rightly, suggested that from this tax quays might be constructed. But he apprehended that in the opinion of the generality of the community more important works than quays should be undertaken. He believed that a copious supply of fresh water was more urgent, and he might here mention such a great work as bridging the Hooghly. But at any rate, till some such project had been agreed upon, it seemed to him premature to levy so heavy a tax on the residents of this City. In fact, taking the matter as it comes before us in this Bill, he must say that it appeared to him to constitute strong objections to the measure, that we did not know how much money we should get under this one per cent. duty, how much we wanted, and what we should do with it when we obtained it. For these reasons he considered the proposal of this tax to be premature, and that its imposition would be an unnecessarily grievous burden on the people.

SIR MORDAUNT WELLS said, it would be admitted on all hands that the true and genuine strength and greatness of a country were very materially influenced by its fiscal regulations. If inordinate taxation demanded from ingenuity and industry larger sacrifices than they were able or perhaps could be justly called upon

to make, in exchange for the benefits accruing from the superintendence and protection of a Government, dissatisfaction arose. Now it could not be said that the people of India were too heavily taxed. His Right Honorable friend proved demonstratively that the Queen's subjects in India were lightly taxed. Then what was the objection to an Income Tax? Surely it was manifestly for the advantage of all classes that the finances of India should not remain in the present crippled condition, with an income wholly inadequate to meet the legitimate demands of the State. Unless the finances of India could be placed on a satisfactory and solid basis, hundreds now in the employ of the Government would be turned adrift, and, in the face of a financial panic, how could they expect to obtain employment? He knew full well that the Income Tax would press heavily on individuals having small incomes, but once develope the resources of this great empire, and there would exist such a demand for skilled labor, that those who were now called upon to make a sacrifice, would within a short period of time reap lasting and substantial benefits under a sound and secure financial system. He had seen the practical working of the Income Tax in England, and he was justified in saying that, by means of that tax, fiscal alterations had been made from time to time, which had conferred almost fabulous benefits and advantages on all classes of the community. Means must be adopted for placing the finances of the country upon a proper footing as the necessary preparation for any effectual reform in other respects. There was no country on the face of the earth which possessed such materials for the substantial improvement of the condition of the whole empire. The future prosperity, the future greatness of British India mainly depended on the construction of public works of various kinds; and, although the Government ought not to be called upon to expend money on the construction of works which, when completed, would be for the exclusive benefit of individuals in contradistinction to such undertakings as might be properly designated as national works, it was absolutely necessary that funds should be obtained to enable the Government to commence at once such works as they might consider advantageous for the public at large.

Now he asked what kind of works were contemplated? He answered, branch Railways, tramways, basins, docks, roads, extension of the canal system to communicate with Railways and navigations, piers, jetties, harbours, and steam ferries, so opening out districts that produced cotton, tea, indigo, silk, coals, iron, and agricultural produce of all kinds. In fact, the producing Districts must have communications with the consuming Districts, and it must be remembered that the masses of the people could not consume the imports unless these goods could be conveyed safely and cheaply to the markets in the interior. Some might say that this was not the time for increased taxation for Public Works. But he would answer unhesitatingly that, looking at the existing railway works and their probable completion within five years, this present time was the very time for proceeding with such works as would make the Railways profitable, and by an early development of the resources of the country, create increased national income by means of indirect taxation, and render unnecessary an Income Tax. He considered that a judicious expenditure of the one per cent would enable the Government to reduce the three per cent tax within five years. It must be well understood that private enterprise could not, without the assistance of Government, accomplish all that was required—in England it might be different.

Having explained his views most imperfectly and somewhat crudely, he wished to say a few words as regarded the machinery by which it was proposed to expend the one per cent when collected. He had confidence in the Executive Government. He said sincerely that he had full confidence in the financial ability and statesmanship of his Right Honorable friend. He had confidence in the

administrative talents of his Honorable friend opposite (Sir Bartle Frere). He had confidence in the resoluteness and sagacity of his Honorable and gallant friend, (Sir James Outram) whose absence we all deplored, and the Governor General gave his support to the Financial measure of his Right Honorable friend, and he believed the Public here as well as at home entertained the same confidence in the Executive Government. That being so, it was better for the Government to manage this one per cent themselves. Pray do not place these funds in the hands of irresponsible parties. If so, the money would be squandered away in the most profligate manner. He had in his mind's eye the fearful waste of the public money in Ireland, chiefly owing to the jobbing of Local Boards. Municipal Commissioners must not be allowed to touch this national fund. He begged to suggest to his Right Honorable friend the propriety of striking out all the Clauses having reference to the management of this fund, and introduce a simple Clause empowering the Executive Government to carry out such works as they might consider beneficial for the public.

MR. FORBES said, he wished to address the Council upon the general question of this Section; but before he did so, he wished to say one word upon what had fallen from the Honorable and learned Judge upon the machinery proposed in this Bill for the management of the one per cent. duties to be raised under this Section. The Honorable and learned Judge was of opinion that the management and expenditure of these duties should be retained in the hands of the Executive Government, and not be entrusted to any local agency. But he thought it was impossible that the Executive Government should undertake this duty. There were two members of the Government now present, and he would ask these gentlemen, if they had now half a lakh of Rupees to expend in Patna, if they could name one single work on which to expend even a small part of that sum? He was sure that they could not, and that they would feel at once that they were wholly dependant on the suggestions of the local authorities for a judicious expenditure of the money. But as regards the suggestions of the Honorable and learned Judge, he would ask that Honorable and learned gentleman to refer to Section CCI, in which he would see that provision was made for the local committees acting in the expenditure of the one per cent. duties only under the sanction and direction of the Executive Government.

Whatever doubts he had regarding this Section did not arise from any question of the soundness of its principle, and he should give it his support. The representations which had been made of the unpopularity of this part of the Bill, although entitled to the fullest consideration by the Council, did not perhaps call for more consideration than was accorded to the objections which had been urged to the whole principle of the Bill, in the many Petitions which had been presented against it from different parts of India. Those objections to the general principle of an Income Tax had been considered by the Council, and, notwithstanding their expression, it was still thought expedient to proceed with the measure, and he did not see in the objections that had been urged to this particular part of the Bill any thing that should have more weight with the Council in inducing it to hesitate in its course, than was to be found in the objections urged to the general principle of the tax.

He took a different view of, and anticipated a different result from the construction of public works from that taken and anticipated by some other Honorable Members, probably in consequence of the part of India in which nearly all his public life had been passed. The waste land in Bengal having been given up at the time of the Permanent Settlement, the Government had no direct interest in the construction of works which would tend to an extension of cultivation. But in Madras, where the waste land belonged to Government, every channel that was dug, every aqueduct that

was built, and every tank that was constructed, added at once to the public revenue; and these things had been so constantly before his eyes, and so habitually familiar to him for many years, that the shining of the sun at noonday was not with him a better ascertained fact, than was the return received by Government from money laid out on works of public improvement. But he went much farther than this, and he could in no way consent to limit the Government returns from money expended on public works to the mere direct return. In his opinion it was impossible that the country should increase in wealth and prosperity without benefit to the public revenue, although not a single rupee might be directly received from that particular source whence the people had derived their profits. It was in this view of the case that he said that, although the advantage derived by the public Exchequer from public improvements in Bengal might not be so great, or so palpable, or so direct, as in some other parts of India, they would be quite as certain, and that therefore this part of the present Bill was of no less importance here than it was in those parts of the country to which he had before referred It was to little purpose that the ryot raised a crop if, when it was reaped, he could not convey it to a market; and it was the want of the means of conveyance which, no doubt, in a very large proportion of the country, still retarded the spread of cultivation. If, however, canals or roads or bridges, or whatever the nature of each locality might demand, were given, the means of disposing of his produce at market would soon lead the ryot to raise that produce, and some part of the profit that he would receive from the sale, would find its way to the public Exchequer, in the shape of duty or excise on additional consumption of taxable articles, as the ryot's means increased, while there would also be the Custom Duty on the additional produce exported from the country. This indirect benefit to the revenue would be even larger in Bengal than elsewhere, because the whole profit from extended cultivation would go to the landlord and his tenant, and no part of it would be absorbed by a direct payment to the Government.

That the Government revenue indirectly benefited largely from an increased prosperity of the people was not matter of doubt or speculation, but was a known and ascertained fact; and he could adduce instances from districts in which he had been himself employed where the fact was palpable. In Tanjore the Government receipts, from what are termed the extra sources of revenue, that is, all excepting the land revenue, were about one lakh and a half of Rupees in the average of the five years, from 1800 to 1805, while in the past five years they had averaged nine lakhs and a half; and in Rajahmundry, in the same way, the exports increased sixfold in a very few years, after the people had become prosperous in consequence of a large expenditure on local public works.

It appeared to him, therefore, that the opposition that was offered to this part of the Bill arose very much from a want of a full comprehension of its scope and intention, and of what would be its certain results.

The Income Tax it was now proposed to lay on for five years, and the Right Honorable gentleman had told them that he was sanguine that, at the end of that time, it might be dispensed with. He hoped that this anticipation might be fulfilled, and that no external war or internal commotion, might arise, to dim this bright prospect. But he was sure that there was nothing that would have a greater tendency to make the anticipation a reality than the very part of the Bill to which objection was now taken. It was on an improvement in the general revenue that we must rest our hope of the discontinuance of the Income Tax, and there was nothing, in his opinion, that would so certainly and so speedily effect that improvement, as an expenditure on local public works. He would take only one case as an instance. The Government, as they all knew, was pledged to a large annual payment as the guaranteed interest on the Capital subscribed for the construction of Railways. Nothing would free the Govern-

ment from the responsibility of the payment but the Railway themselves yielding a dividend of five per cent.; every thing therefore which enhanced the Railway profits would diminish the Government expenses. Now what would raise the profits of the Railways but their being extensively made use of by the people, and what would lead to this more extended use so much as the formation of roads and bridges to serve as feeders to the rail, so that the produce of the country might reach it?

He supported this part of the Bill therefore on the ground that it afforded the best basis for hope that they might, within a certain specified time, be relieved altogether from the Income Tax.

The Honorable Member for Bengal had said that they did not know how much money they should get under this one per cent. duty, nor how much they wanted, nor what they should do with it when it had been obtained. He (Mr. Forbes) must say that he thought this a very extraordinary remark, and he was quite sure that the Government was under no alarm or apprehension that they would obtain too much, and had no feeling of fear or doubt that they would be unable to expend the money, let its amount be what it might. He held in his hand the Public Works Budget of the Madras Presidency for 1857-58, and he found, on referring to it, that its total amount was seventy lakhs of Rupees, and that this total sum was divided among the different districts in sums varying from two to four and a half lakhs of Rupees, and he would undertake to say—and he said it with an honest pride in the service of which he had the honor to be a Member—that there was not one Collector of any one of those districts who would not gladly have undertaken to expend double the sum allotted to him, and who would not have expended it very greatly to the benefit of the country and the advantage of the Government revenue.

If he had any doubt about the one per cent. tax at all, it arose from a want of information on this point, and he would state it freely, in the hope that he might elicit some distinct explanation from the Government. The Council knew that, under the system which now obtained, each Presidency in India annually sent to the Supreme Government a Public Works Budget, detailing the several works proposed to be undertaken and naming a certain sum for their construction. The total sum that the Government of India could allow from the public revenue was then apportioned among the Presidencies, and they were left to carry on their own works. Now he wished to know if this sum was to be in future granted as additional to, and irrespective of what might be raised from the one per cent. duty, or whether the total expenditure on public works would remain the same, and be composed, partly of the one per cent. duty, and partly of a fresh grant from the Exchequer?

The Madras Public Works Budget for 1857-58 was seventy lakhs. What he wished to know was whether, supposing a similar budget were sent up for 1860-61, it would be sanctioned in full, or minus the amount that would probably be received from the one per cent. duties? If the one per cent. duties were to be in addition to the ordinary budget, he considered that it would be a great good to the country; if they were to be included in the ordinary budget, then it would result in a mere matter of account, and no practical good would be attained.

SIR BARTLE FRERE said that the remarks of the Honorable and learned Judge, and the Honorable Member for Madras in which he entirely concurred, left him little to say in support of his opinion that this provision for one per cent of the Income Tax to be devoted to public works was one of the most valuable parts of the Bill. Perhaps the Honorable Member for Bengal would have been better satisfied if he had considered more particularly the wants of that class of works which would principally benefit by the proposed enactment. We had here in India the same three grand classes of public works as in England and elsewhere, namely, Imperial, Provincial, and Local.

The first class, Imperial works, would include all the great trunk roads and Railways, the great harbors, military works, and other works, imperial either in the extent of their utility or in the nature of the use to which they were applied. The youngest of the Members here present could recollect when little or nothing was attempted in India in the shape of public works, except perhaps fortifications, naval and military works, and public Offices. Of late years more attention had been given to works of a reproductive character, and such works as the Grand Trunk Road, the Ganges Canals, and the improvement of the Godavery had been undertaken. It was impossible to mention this last named work without thinking of General Arthur Cotton, to whom more than to any other single man in England or in India was due the interest which had been of late taken in Indian Public works, the sound principles which had been laid down, and the progress which had been made in doing a part of our duty as regarded them. But all such works, with very few exceptions, were now at a stand for want of funds.

As regards public works of a provincial character, such as would in England be executed from the county funds, we had in this country made hitherto little or no permanent provision. There was in the North-Western Provinces and in the Punjab a road fund formed by a percentage tax on the land, but with a few such exceptions there was no way of providing for provincial public works, save by direct grants from the public treasury. To this class belonged all the Railway feeders, most of the docks, canals, and works of a reproductive character. They could hardly be called imperial, because their direct influence was confined to the province or district to which they belonged, though he fully agreed with the Honorable Member for Madras that every mile of made road, no matter where it was, which assisted to bring produce to market, was a direct and valuable addition to the resources of the empire. At present all these provincial works depended mainly on grants from the general revenue of the country, which were now, and must be for some time to come, suspended. It was works of this class which would probably most feel the advantage of the one per cent. devoted to public works.

For the third class, or merely local works, such as would be provided for from the funds of towns or parishes in England, some provision existed in Municipal Funds, Ferry Funds, and the like—very inadequate, but still not absolutely at a stand-still like the works of more extended utility depending on the imperial treasury.

A return had been recently called for of the larger public works at present suspended for want of funds. This return was not to include all desirable public works, but simply such as had been duly estimated for, and sanctioned, and were either in progress or in a state to be commenced at once. No works were included which were calculated to cost less than £10,000 (a lakh of Rupees) each, and the total amount of such works now suspended or not commenced for want of funds was close on ten millions sterling. Among them would be found, besides great public Offices of various kinds urgently wanted, such works as the Wet-Docks for Calcutta, improvements in the water communication of Bengal, bridges on the Grand Trunk road, irrigation works in Cuttack and South Behar, the completion of the great Ganges Canal in the North Western Provinces, of the Baree Doab Canal in the Punjab, of the great military lines of road in that Province, the canal system of Sind, the Godavery navigation in Madras, and Railway feeders in all the Presidencies. These were but a few of the works he could enumerate, but they would serve to show the character of the works now suspended, and the immense extent of the resources required to carry out a portion, and but a small portion of the works needed—some to afford means of transport, some of irrigation, some calculated to return directly thirty or forty per cent. on the outlay, others to open out large provinces to commerce. On many of the works thus suspended great progress

had been made when they were stopped. The sums already expended on them amounted to 2½ millions sterling. There were many of the most valuable of these works which could not, for a long time, be taken up by Government out of the general revenue, but which might be immediately put in hand with the help of this one per cent.

Of the objections taken by the Honorable Member for Bengal, most had been already noticed by the Honorable and learned Judge and the Honorable Member for Madras. With regard to the suggestion that this portion of the Bill, however good in itself, should be deferred, he would observe that every month's delay of such necessary works was a very serious evil. The Honorable Member must be aware how long it took to put any large work into active operation. At first little progress could be made, labor and materials had to be collected, the working season was limited, and it was not till the second and third year that much progress was made, and it was of course some time longer before any direct return could be expected. The Honorable Member had said the term "local" was too indefinite, but he (Sir Bartle Frere) felt no doubt that his Right Honorable friend would be able so to limit the application of the funds as to prevent the money being spent on any works of merely local importance, and to secure that all should be duly devoted to works which would be directly reproductive and so improve the general revenue of the country.

As regarded the machinery to be employed, he did not question the justice of much which had been said of the municipalities, but he believed that, if such bodies were properly constituted, so as to include a proper representation of all classes of the community, if they were made in reality what they professed to be—real representative bodies—you could not have better judges of the works on which it was desirable to lay out money. In the application of the money, he believed it would be desirable to provide for the supervision of responsible public officers under the control of Government.

His Honorable friend the Member for Bengal said that the one per cent. would be a heavy addition to the three per cent. No doubt it formed a considerable proportion in the total tax of four per cent., and he rejoiced that so much of the new tax was to be effectually secured for application to reproductive public works, and put out of the power of Government to spend in other ways. He believed that, after a brief experience, it would be the most popular part of the Bill, and that, before the term fixed for the expiry of the Act, it would be willingly paid by all classes, Natives as well as Europeans. He did not speak unadvisedly in the matter. He believed that in India as everywhere else, the people were fully aware of the advantages of such taxation if they saw the proceeds honestly laid out in the manner stipulated for. No inference to the contrary could be drawn from any instance in which faith was not so kept with the people.

It had been remarked that, owing to the circumstance of the tax on public funds, large salaries, and other prolific sources of income tax being payable at Calcutta, that city would get more than its fair share. He did not grudge this. It was a privilege which every capital city would and ought to enjoy, and there was ample room for the application of any amount of funds in a manner which would more or less directly benefit the inhabitants of the city itself as well as the country at large.

MR. HARINGTON said, in coming down to the Council to-day to assist in passing this important Bill through Committee, his wish was that, beyond perhaps having to suggest a few verbal alterations as they proceeded with the Bill, he should not have occasion to address the Committee. They had been given distinctly to understand that the Bill was brought in and proposed for their adoption entirely upon the responsibility of the Executive Government, and he was willing to accept the Bill and to give it his support upon that understanding.

Quoting the words which he believed fell from the Honorable and learned Judge on his left (Sir Mordaunt Wells), his (Mr. Harington's) desire was to accept the Bill as a whole, and not to pick holes in any part of it. In the few remarks which he ventured to offer to the Council, after they had been addressed by the Right Honorable gentleman opposite and had heard from him the very full and able statement which he made in this Chamber in February last, he tendered his services to the Right Honorable Gentleman in preparing the Bills which he informed them it was his intention to bring in, and he added that, whatever might be his individual views in respect to some of the important questions discussed by the Right Honorable gentleman in the statement just referred to, he (Mr. Harington) proposed to keep those views to himself when they differed from those of the Right Honorable gentleman, and to avoid as much as possible any thing that might embarrass the Government. He trusted that he had acted up to the intentions expressed by him, and that he had fulfilled his pledge. He might mention that that very day, though a most important question had been raised, upon which he was supposed to entertain a different opinion from the Honorable Member who had discussed the question, he (Mr. Harington) had purposely remained silent. As regarded the Bill itself, he could truly say that he had labored, heartily and earnestly, conjointly with the Right Honorable gentleman and the other Members of the Select Committee, to improve the Bill and to render it as workable a Bill as possible, and he wished to take this opportunity of acknowledging the manner in which the Right Honorable gentleman had spoken of the services of the Select Committee.

He commenced these remarks by stating that it had not been his wish to address the Council on this occasion, but after what had fallen from Honorable Members on the subject of the Section before the Committee, he felt that, if he gave a silent vote in favor of that Section, it would naturally be supposed that he approved of and acquiesced in it, whereas the very contrary was the fact. From the time that he heard of the intention to raise funds for local purposes by means of an Income Tax, he had entertained the most serious objection to the proposition, and he very much regretted that it had been embodied in and formed part of the Bill to which it appeared to him it could not, under any circumstances, be considered properly to belong. He agreed in much that had been said on the subject of this Section by the Honorable Member for Bengal. He willingly admitted that it was most necessary that the whole or the greater part of the public works which had been mentioned by Honorable Members who had preceded him in the debate should be pushed on as rapidly as possible to completion. No one was more sensible than himself of the immense advantages that would result from the completion of those works. There could be no doubt that they would materially contribute to the comfort, prosperity, and happiness of the people, and that they would be beneficial to England, as well as to India. Funds on a very large scale were, of course, required to carry on these works, and they must be provided, though he thought that this might be done in some other way than by means of an Income Tax. In the North-Western Provinces, and he believed in the Punjab and Oude also, the Zemindars contributed one per cent. on the Government jumma to a road fund which was found to be quite sufficient for the purpose of constructing district roads, and as the railways extended to those parts of the country, roads, as feeders to them, would no doubt be made without difficulty from the same source. In the Presidency towns and some other places they had municipal taxes, by means of which considerable local improvements were being carried on. These were legitimate ways of raising money for local purposes, to which it was proposed to appropriate the one per cent. of the Income Tax now under discus-

sion, but if more money were required, as doubtless it would be, for some of the larger and what might be called the more productive works, he thought that it might properly be raised by means of a public loan, the amount with interest being eventually repaid out of the profits of the works upon which it was expended. He considered that this would be preferable to raising money for public works by means of an Income Tax. He thought that there could be no doubt that, in the existing state of the country, an Income Tax, such as had been proposed, was absolutely necessary to restore the equilibrium between income and expenditure, and to place the finances of the country on a satisfactory footing. He accepted the present Bill on conviction of that necessity. He considered that what had from time to time been stated to them on this point by the Right Honorable gentleman opposite, was conclusive and amply sufficient to satisfy all reasonable men. The Right Honorable gentleman had fully made out the necessity for the measure. The need of such a tax was greatly to be regretted. But the necessity existed, and it must be faced and met. He (Mr. Harington) did not know any other way in which it could be less objectionably met, and therefore whatever objections he might have to the introduction of a Bill of this nature into India, he felt that his duty was to waive those objections and to give the Executive Government his support in carrying the present Bill through the Council. Still he could not conceal from himself that there was a vast difference between the two objects which this Bill was intended to accomplish, namely, to make the income and expenditure of the country meet, and to provide funds for local purposes. For the one an Income Tax might be a perfectly proper tax, but not so for the other. Had the Right, Honorable gentleman been in the country at the time to which His Excellency the Governor General alluded in the early part of the speech on the Customs Bill, which His Lordship made in that Chamber in the month of March last year, when income and expenditure were nearly balanced, and no necessity for an Income Tax to restore the equilibrium between them existed, but when most of the public works to which reference had been made had been projected, and funds for their construction were required almost as urgently as at the present time, would he have ventured to propose an Income Tax of one per cent. or even of any amount for the sole purpose of raising or supplying those funds? He (Mr. Harington) thought that he might anticipate the Right Honorable gentleman's answer, and that it would be in the negative—and why—simply because it could not be proper to impose an Income Tax in any country solely for such a purpose. No doubt it was generally admitted that, in theory, no tax was more equitable than an Income Tax, but it was as generally admitted that in practice it operated most unequally, and that it was so objectionable that only a great and pressing necessity should ever call it into existence, and that it should cease as soon as that necessity had passed away. If every man were honest and promptly paid his quota, the tax would be most productive, and no oppression would be practised in its collection; but it was notorious that the very reverse of this was the case; that every attempt was made to evade the tax where it existed, and that it gave rise to forgery and perjury and all kinds of dishonest practices, while so great was its inequality that it had come to be regarded by many as a most unjust tax. He had read a good deal on the subject of an Income Tax during the time the Bill had been before the Council; and he found that almost all those who had written or spoken on the subject, including the recent speakers in Parliament on Mr. Gladstone's Bill, were opposed to such a tax as a permanent measure, and, although they all admitted that, in a case of emergency, an Income Tax was perfectly justifiable and might be unavoidable, it should be given up as soon as possible, and indirect taxation again reverted to.

That such an emergency now existed he had already admitted, and therefore he thought that the Government were right in proposing the present Bill, but only for general and not for local purposes. The objections to an Income Tax were aggravated in this country by the agency which it was necessary to employ to carry it out. It was notorious that, whenever natives were employed to collect any tax, they collected as much for themselves as they did for the Government, and he believed that any dislike which the natives might have to the tax now proposed, was rather from the fear of the oppression to which they knew they would be exposed in its collection at the hands of their own countrymen and which, whatever arrangements might be made, it would be extremely difficult, if not impossible, to prevent, than from any real unwillingness to pay the tax. If all cause for this fear could be removed, he believed that, in most cases, the tax would be paid cheerfully enough. But look at the consequences of retaining this one per cent Income Tax for local purposes after the necessity for the rest of the proposed tax should have ceased. Nearly the same agency would be required for collecting one per cent. as four per cent. The same inquisitorial, vexatious, and harassing processes must be resorted to in order to save the Government from being defrauded, and what would be the result, why, the expenses of collection would swallow up a very large proportion of the sum collected. This appeared to him to be a very great objection to the Section in question. The Right Honorable Member opposite had told them that he confidently expected that the state of the finances would enable him to give up an Income Tax for general purposes at the expiration of five years, and to confine its collection to local purposes; but if an Income Tax were not open to the objections which he (Mr. Harington) had stated, it would be better to make the tax permanent, and to give up other taxes which pressed most heavily upon the poorer classes, such as the duty upon salt. He believed he had not overstated the case. The Honorable Member of Council on his left (Sir Bartle Frere) was of opinion that the natives would be quite reconciled to the tax of one per cent. for local purposes, when they found that the money was really spent in a manner by which they directly benefited, and he had instanced applications which had been made to him by persons who offered themselves for taxation on condition of the money being expended in local improvements. He (Mr. Harington) always distrusted these voluntary offers on the part of the people of this country. Not long ago, they were told that in the Punjab the increase of the town duties was hailed with delight and rejoicing—that a kind of jubilee was held on the occasion. Subsequent reports had rather thrown doubts on the statements that had been received, and there was reason to believe that the authorities had been imposed upon. The general timidity or obsequiousness of the native character led them often to agree to measures proposed by their European superiors, to which at heart they were strongly opposed, and hence it was that so many measures, the introduction of which was made to depend upon the acquiescence of those for whose benefit they were designed, though nominally assented to, proved so unpalatable and unpopular. He (Mr. Harington) had been much struck with a remark which he found in a letter from a very able officer under the Bengal Government on the proposed Income Tax. The officer alluded to was Captain Dalton, the energetic and intelligent Commissioner of Chota Nagpore. He said—

> "The necessity of the imposition of one per cent. in perpetuity for public works is not to me apparent, and I regard it as an addition that will add greatly to the difficulties of expounding to the native community the thoroughly equitable principle on which the Government wish to proceed in restoring the finances to a healthy state."

Having thus stated his objections to the provision in question, he would willingly leave the matter in the

hands of the Executive Government. He should vote for the Section, but he should much rejoice if the Executive Government, upon further consideration, should determine to withdraw the provision contained therein even though in so doing they should find it necessary to propose an increase of the three per cent. duty to four or even five per cent., on the understanding that the rate would be reduced as the necessities of the State became less, until the time arrived when it might be found possible to give up the tax altogether.

THE CHAIRMAN said, it was not his intention to occupy the time of the Council at any very great length. He was very much in favor of a Public Works Tax. He thought it was quite fair that they should have a tax to enable the Government to carry on public works of utility in this country, and he fully agreed in the observations made by the Honorable and learned Judge and the Honorable Member of Council (Sir Bartle Frere) in support of the measure. In this year's budget, 1860-61, he found a demand for public buildings, military or otherwise, amounting to four and a half crores. It was very desirable that regular public works, such as were calculated to open the resources of the country, should not be neglected; but he doubted very much whether so large a revenue as would be derived from such a measure, the greatest portion of which would be collected in this city, should be devoted to municipal purposes, and be placed under the control of the municipality in Calcutta, instead of being laid out for the prosecution of that class of public works which would be reproductive to the country. It must be remembered that most of the money thus collected would be paid as he had said, in Calcutta. There were here the Banks, Railway Companies, and the largest mercantile houses. It must also be borne in mind that the largest civil salaries were paid here, and as regards the military, the largest staff salaries also. The question therefore was, whether the large sum of money that would thus be collected ought to be entrusted in the hands of the Municipal Commissioners, to be applied by them, subject to to the approval of the Lieutenan-Governor. He thought, by entrusting it to the Municipal Commissioners, they would suppose that it was intended to be applied to municipal purposes, and not to the construction of reproductive works, such as would develope the general resources of the country. He was certain there would be a strong objection to this on more grounds than one. Suppose a gentleman residing in Patna had a large sum of money vested in Government Paper, and also landed property situated in that district.. He would be assessed wholly in Calcutta, and thus his property would not benefit in any way by the municipal improvements carried on in Calcutta. It was but fair that he should have some return for the tax paid by him. Take again the case of a Member of Council whose salary was not paid for his services in Calcutta, but for the whole of India. He quite agreed with his Honorable and learned friend and the Honorable Member for Bengal as to the application of the tax to imperial purposes. He (the Chairman) thought that the Honorable Member for Madras was under some misapprehension as to the observations of the Honorable Member for Bengal. He (the Chairman) did not understand the Honorable Member for Bengal to say, how the money *could* be expended, but how it *would* be expended, so as to be most reproductive.

Another objection that might be taken to this one per cent tax was that the Bill, in assessing incomes, made no distinction between salaries and profits arising from property. It would no doubt be very difficult to do so, and in point of fact no distinction of the kind had been drawn in England. What property had the professional man or the man who obtained his livelihood by the sweat of his brow to be protected? The man who had only his salary to depend upon might be a bird of passage and leave the country to-morrow; what benefit would he derive from this local improvement tax? He (the Chairman) therefore said that, if a tax were to be

imposed for public works, it should be for public works of a reproductive character, and he entirely agreed with his Honorable and learned friend (Sir Mordaunt Wells) that it would not be right to entrust the application of the tax to the Municipal Commissioners, but to the Government of India. The Honorable Member for Madras had asked, how could the Governor-General in Council know what public works were required in Patna or elsewhere, or what sum should be expended on account of them? Surely it was not supposed that the Governor-General acted barely on his own knowledge or information. He had a Public Works Department and a Public Works Secretary, and he had budgets submitted to him by the several local Governments, showing the various public works required to be constructed in the course of the year, according to which the Government of India decided upon the expenditure for that year in each Presidency. It therefore appeared to him that the whole of this one per cent. duty should be placed under the Government of India in the Public Works Department, for the purpose of developing the resources of India and of being employed in reproductive works.

MR. WILSON said, although we had been anticipating the discussion that had taken place on a later part of the Bill, it must be admitted that an hour had not been better spent. He agreed in much that had fallen from the Honorable and learned Chairman and the Honorable and learned Judge on his left (Sir Mordaunt Wells), and he did not think that the arguments which had been urged by them were incompatible with the views of the Honorable Member for Madras and the Honorable Member opposite (Sir Bartle Frere). Although the Bill called it a tax for local purposes, it was never intended that the amount collected in each district would be expended for the benefit of that district only. There would be a separate account of the amount realised by this tax; and in apportioning the total sum among the several Presidencies according to their requirements, the specific sum so distributed would be carefully managed at each district. The sole object of this tax was to improve the resources of the country, and as the Honorable and learned Judge had remarked, would prove the most effectual means of getting rid of an objectionable tax. He (Mr. Wilson) was indebted to the Honorable Member for Madras for having pointed out one or two anomalies, as well as for having suggested the manner in which they might be met. With regard to the question put by the Honorable Member for Madras as to whether the one per cent. duty was to be in addition to or in substitution of the present budget, he (Mr. Wilson) felt no hesitation in stating that the tax was intended to be added to our permanent charges on account of public works, and would be applied to works, the construction of which had been duly sanctioned. It was not the intention of the present Government to reduce in any possible way our present expenditure for those purposes, and he hoped that when we saw our finances improving, there would be an increased prosecution of public works which had long been neglected.

THE CHAIRMAN then moved the substitution of the words "reproductive public works" for the words "l cal purposes" in line 6.

The Motion was carried and the Section as amended then passed.

Sections 4 and 5 were passed as they stood.

Section 6 was passed after the omission of the words and figures "1st day of May 1860," leaving the date for the commencement of the 1st year of assessment to be fixed hereafter.

The consideration of the Bill was then postponed.

STAMP DUTIES.

MR. HARINGTON moved that a Message be addressed to the Right Honorable the Governor-General in Council, requesting that he would have the goodness to furnish the Council with a statement of claims relating to the recovery of Rent preferred in the Revenue Courts of the Lower and North-Western Provinces of the Presidency of Bengal, from the

1st August 1858 to the 1st July 1860, and of the amount of Stamp Duty paid on the claims or petitions of plaint—and a statement of regular suits and appeals instituted in the Lower and North-Western Provinces of the Presidency of Bengal, to set aside decisions of the Revenue authorities in cases of the nature mentioned in the preceding statement from 1st August 1858 to 1st July 1859, and of the amount of Stamp Duty paid on the petitions of plaint or appeal—under the following heads :—

1. Suits for the delivery of pottahs or kuboolyuts, or for the determination of the rates of rent at which such pottahs or kuboolyuts are to be delivered.

2. Suits for damages on account of the illegal exaction of rent, or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress.

3. Complaints of excessive demand of rent, and all claims to abatement of rent.

4. Suits for arrears of rent due on account of land either kherajee or lakhiraj, or on account of any rights of pasturage, forest rights, fisheries, or the like.

5. Suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment or a lease may be liable to be cancelled.

6. Suits to recover the occupancy or possession of any land, farm, or tenure from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent of the same.

7. Suits arising out of the exercise of the power of distraint conferred on zemindars and others by Sections CXII and CXIV of Act X of 1859, or out of any acts done under color of the exercise of the said power.

8. Suits by zemindars and others against their agents, or the sureties of such agents, for money, papers, or accounts.

9. Applications for ejectment of cultivators, farmers, &c, by zemindars.

10. Application to dispossess grantees of land exempt from revenue.

11. Amount of Stamp Duty paid on the claims or petitions of plaint in the foregoing cases.

12. Appeals from decisions passed in the foregoing cases.

13. Amount of Stamp Duty paid on petitions of appeal.

In making the motion, he (Mr. Harington) said that the information returns which he now asked for would supply, would show to some extent, not only how Act X of 1859 (Mr. Currie's Act) had worked generally, but also what had been its effect on the Stamp Revenues.

Agreed to.

MR. HARINGTON then moved that Mr. Wilson be requested to take the above Message to the Governor-General in Council.

Agreed to.

The Council adjourned at half past 10 o'clock on the Motion of Sir Bartle Frere, till to-morrow morning, at 7 o'clock.

Tuesday Morning, June 26, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq., and
H. B. Harington, Esq.,	Hon'ble Sir M. L. Wells.

INCOME TAX.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for imposing Duties on profits arising from Property, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill.

A verbal amendment was made in Section II on the motion of Mr. Harington.

Sections VII to XVI were passed as they stood.

Section XVII was passed after a trifling amendment.

Section XVIII was passed as it stood.

Sections XIX and XX were severally passed after a verbal amendment.

Sections XXI and XXII were passed as they stood.

Section XXIII was passed after amendment.

Sections XXIV and XXV were passed as they stood.

Section XXVI was passed after the substitution of the word "salaries" for the word "stipends" in the third line, and, on Mr. Harington's Motion, the Clerk of the Council was authorized to make a similar alteration throughout the Bill.

Sections XXVII and XXVIII were passed after verbal amendments.

Sections XXIX to XL were passed as they stood.

Section XLI was passed with the addition of the following words, on the motion of Sir Mordaunt Wells :—

"No person being required to deliver a list of lodgers, inmates, or other persons aforesaid, shall be liable to the penalties hereinafter mentioned, or either of them, for any omission of the name or residence of any person in his service or employ and not resident in his dwelling house, if it shall appear that such person is entitled to be exempted from the payment of all and every the duties hereby imposed.

Sections XLII to LIV were passed as they stood.

Section LV was passed after verbal amendments.

Sections LVI to LXXII were passed as they stood.

Section LXXIII was passed after a verbal amendment.

Sections LXXIV and LXXV were passed as they stood.

Section LXXVI was passed after a verbal amendment.

Sections LXXVII to LXXXVI were passed as they stood.

Sections LXXXVII and LXXXVIII were passed after trifling amendments.

Sections LXXXIX to XCII were passed as they stood.

Section XCIII was passed after a verbal amendment.

Sections XCIV and XCV were passed as they stood.

Section XCVI contained the Rules for assessing and charging the duties under Schedule 1.

Rules 1 to 3 were passed as they stood.

Rules 4 and 5 were passed after amendments.

Rule 6 provided as follows :—

"In estimating such rents and profits, the gross amount received during the preceding year shall be fully stated; but if the person receiving the same be himself liable to pay, in respect of the said land, any rent to any superior landlord, he shall state in his return the amount of such rent, and the name of the person to whom it is payable, and he shall be charged with the said duties on his net rent and profits after deducting the amount of the rent so payable by him to such superior landlord."

After a verbal amendment, which was carried in line 1,

MR. WILSON said that this Section had already been much considered, but might still very profitably be the subject for further discussion. In England the tax fell on the occupier who deducted the Income Tax in paying the landlord, who again deducted it in paying charges on his estate. There if any persons in the category had a claim for exemption, they made it to the Board of Revenue, which could consider the whole case of the claimant. It might be that, in respect of his share of the income from the estate, he might receive less than £100, and might not be liable to the Income Tax, but he might as to other sources of income, and so might properly be charged in respect of all. This was the simple plan. Here in India it was not proposed to levy the tax on the ryot, but the person receiving the rent should pay, and then he in paying any other landlord might deduct the amount of income tax due on that landlord's share. This relieved the Government of all difficulty in discovering the proportions chargeable to each person. It left those who were concerned to settle the matter among themselves, and if any one of them received less than the amount chargeable with Income Tax, he would apply for a refund of any amount that had been charged to him by his under-tenant.

MR. SCONCE said, that he feared this plan was not adapted to Bengal. A man might receive the rent in the first instance from the cultivators, but after that it would probably be distributed into many shares, between the fist recipient and the zemindar, many of them having incomes below the limit of the Bill. Such cases in this country would be very numerous. The rent paid by the cultivators might exceed 200 Rupees a year, but the whole might be proved to be enjoyed in portions below 200 Rs., so that none of the receivers would be liable to the tax. To tax the first receiver in such cases would often be a great hardship, and would lead to great confusion and annoyance.

SIR MORDAUNT WELLS said, he thought the arrangement suggested by the Right Honorable gentleman the only safe one. The danger was that estates would be divided by benamee transactions for the purpose of evading the Act, and some one person should therefore be held liable in the first instance.

MR. HARINGTON said, he agreed generally in the objection taken by the Honorable Member for Bengal to any alteration of the nature suggested. The remedy proposed by the Right Honorable gentleman, namely the right to claim refunds, would involve much hardship on claimants who might have to travel considerable distances to the Government Offices, and when they got there might often be subjected to great delay and expense. It would also throw a great deal of extra labor on the Collectors.

SIR BARTLE FRERE said that, as he understood, the plan proposed would enable the Government to deal with the registered receiver of the rents, and this would be the simplest course.

MR. SCONCE said, it would not be the registered zemindar who should pay under the proposal of the Right Honorable gentleman, but the tenant who was in the receipt of the rents from the cultivators. He believed that the course proposed would be absolutely intolerable. At any rate, he thought it should not be adopted without further consideration.

THE CHAIRMAN said, he had no difficulty in his own mind, but would consent to an adjournm nt if it were wished by others. The question was, whether a man receiving rents and having charges on his income should pay the whole Income Tax and deduct from others to whom he had to pay over parts of their rents, their proportions of the tax, or should pay only for his net share and leave others to pay theirs. He would put two cases. *First*, suppose a man paying a jumma of Rupees 500, letting to A for Rupees 1,000, who let to B for Rupees 2,000, who let to C for Rupees 4,000. In that case, if C were to realise Rupees 4,000 rent, he could pay the Income Tax without difficulty, and then in paying B his Rupees 2,000, he could deduct the tax on that, and B could pay over his Rupees 1,000, deducting the tax on that. The other case was this. Suppose a jumma of Rupees 150, the estate let for Rupees 300 to B, and by him to C for Rupees 450. Here none of the receivers would have a clear profit from that source of Rupees 200, but still it would be right that the tax should be charged on the Rupees. 450, and be deducted as each receiver paid over to the next man, for each of them could claim a refund, and when he did so, he would be liable to examination as to his other sources of income, which probably might make up his income to Rupees 200. But he doubted if there were many cases such as he had last supposed.

It was eventually agreed to postpone the consideration of this and the two following rules.

Rules 9 to 23 were passed as they stood.

The further consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council adjourned at 10 o'clock on the Motion of Sir Bartle Frere, till to-morrow morning, at 7 o'clock.

Wednesday Morning, June 27, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,
Right Hon'ble J. Wilson,
H. B. Harington, Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.,
and
Hon'ble Sir M. L. Wells.

SUCCESSIONS.

THE VICE-PRESIDENT read a message, informing the Legislative Council that the Governor-General had assented to the Bill "for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons."

INCOME TAX.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill.

Section XCVII contained the Rules for assessing and charging the duties under Schedule 2.

Rule 1 was passed after amendments.

Rules 2 and 3 were passed as they stood.

Rule 4 was passed after a verbal amendment.

Rules 5 to 22 were passed as they stood.

Rule 23 was passed after an amendment.

Rules 24 to 40 were passed as they stood.

The consideration of Rule 41 was postponed.

The remaining Rules under Section XCVII were passed as they stood, after the insertion of the words "General Rule" as a heading to Rule 49.

Section XCVIII contained the Rules for assessing and charging the duties under Schedule 3.

Rule 1 provided as follows:—

"The said last-mentioned duty shall be assessed by the Ex-Officio and Special Assessors herein authorized to make the assessment on any interests, annuities, dividends, or shares of annuities charged in the said schedule 3, and shall be deducted by the officers and persons entrusted with the payment of such interests, annuities, dividends, or shares of annuities, on behalf of the persons entitled thereto, and shall be assessed by the Ex-Officio and Special Assessors hereby authorized to be appointed for such purposes. Such duties shall extend to all interests, annuities, dividends, or shares of annuities whatever payable in India, out of any public revenues which shall become due on or after the 1st day of May 1860, except in the following case of exemption from the said duty, namely, the securities, stock, or dividends of every Savings Bank established by the Government within any part of India, and the dividends or interest payable by any Savings Bank upon any funds therein deposited belonging to any depositor."

THE CHAIRMAN moved the omission of the words "and shall be assessed by the Ex-Officio and Special Assessors hereby authorized to be appointed for such purposes" as being a misprint.

Agreed to.

The date, 1st May 1860, was struck out, leaving the blank to be filled up hereafter, and the Rule was passed after the omission of the concluding words which contained an exception in favor of Government Savings Banks.

Rule 2 was omitted consequent on the last mentioned amendment in the preceding Rule.

The remaining Rules under Section XCVIII were passed as they stood.

Section XCIX contained the Rules for assessing and charging the duties under Schedule 4

Rule 1 was passed as it stood.

Rule 2 was passed after the correction of a misprint.

The consideration of Rule 3 was postponed.

The remaining Rules under Section XCIX were passed as they stood.

Sections C to CXI were passed as they stood.

Section CXII was passed after an amendment.

Section CXIII was passed as it stood.

Section CXIV was passed after a verbal amendment.

Section CXV was passed as it stood.

Section CXVI was passed after a verbal amendment.

Sections CXVII to CXXV were passed as they stood.

Section CXXVI was passed after a verbal amendment.

Sections CXXVII and CXXVIII were passed as they stood.

Section CXXIX was passed after an amendment.

Sections CXXX to CXXXV were passed as they stood.

The Council adjourned at half past 10 o'clock, on the Motion of Sir Bartle Frere, till to-morrow morning, at 7 o'clock.

Thursday Morning, June 28, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq., and
H. B. Harington, Esq.,	Hon'ble Sir M. L. Wells.

AMRS AND AMMUNITION.

THE CLERK presented the following Petitions concerning the Bill "relating to the manufacture, importation, and sale of Arms and Ammunition, and for regulating the right to keep and use the same":—

A Petition from certain British subjects, or of European or American race, residents of Calcutta and of the Mofussil.

A Petition from the British Indian Association.

MR HARINGTON moved that the Petitions just presented be printed, and in order that Honorable Members might have time for considering those petitions, he begged further to move that the consideration of the Bill to which they related be postponed till Saturday next.

Agreed to.

INCOME TAX.

The Order of the day being read for the adjourned Committee of the whole Council on the Bill "for imposing Duties on profits arising from Property, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill.

THE CHAIRMAN moved the introduction, before Rule 36 Section XCVII, of the following Rule, prepared by the Clerk of the Council, relative to Bodies Corporate:—

"Every Body Corporate, Company, or Society shall be charged to the duties contained in this Act by the Collector or Commissioners acting for the place where the head office in India of such Body Corporate, Company, or Society is situate."

Agreed to.

THE CHAIRMAN moved the introduction, after Rule 1 Section XCVIII, of a Rule, also prepared by the Clerk of the Council, relating to enfaced notes. The Rule, as finally amended in Committee, was as follows:—

"All Promissory Notes of the Government of India, which shall be enfaced for payment of the interest thereon out of India, either by Drafts or Bills on India or otherwise, shall in all cases be enfaced subject to the condition that the amount of any duties which may at any time be chargeable in India in respect of such interest, shall be deducted therefrom at the place where the interest shall be paid or the Drafts or Bills shall be given."

Agreed to.

Section XCIX provided as follows:—

"The duty hereby imposed contained in the Schedule marked 4, shall be assessed and charged under the Rules hereinafter mentioned; and the said duty shall be annually charged on the persons respectively holding or exercising the offices or employments of profit mentioned in Schedule 4, or to whom the annuities, pensions, or stipends mentioned in the said Schedule shall be payable for all salaries, perquisites, or profits whatsoever

accruing by reason of such offices, employments, annuities, stipends, or pensions."

THE CHAIRMAN moved the omission of the words "for all salaries, perquisites, or profits whatsoever accruing by reason of such offices, employments, annuities, stipends, or pensions" at the end of the Section, and the substitution for them of the following words prepared by the Clerk of the Council :—

"The duty in respect of every annuity, pension, or stipend shall be assessed upon the amount of such annuity, pension, or stipend, and the duty in respect of every office or employment shall be assessed upon the amount of all salaries, fees, commissions, or other profits accruing by reason of such office or employment, whether the same be paid by Government or received from any other person whatever or be deducted by the person holding such office or employment from any funds in his possession."

The Motion was carried, and the Section as amended was then passed.

Rule 1 provided as follows :—

"Every assessment in respect of every such office and employment and of every such annuity, pension, and stipend, shall be made in cases requiring audit at the time of audit, and in all other cases at the time of payment."

THE CHAIRMAN moved the substitution for the above Section of the following Section prepared by the Clerk of the Council :—

"Every assessment in respect of every such annuity, pension, and stipend, and every assessment in respect of every salary or payment made by Government to any public officer, shall, in cases requiring audit, be made at the time of audit, and in all other cases at the time of payment."

Agreed to.

The postponed Rule 3 provided as follows :—

"The perquisites to be assessed under this Act shall be deemed to be such profits of any office and employment as arise from fees or other emoluments, and payable by the Government for the execution thereof, or received from any person in the course of executing such office or employment, and shall be estimated on the profits of the preceding year, ending on the 30th of April, or on any other day on which the accounts of such profits have been usually made up."

THE CHAIRMAN moved the substitution for this Rule of the following Rule prepared by the Clerk of the Council :—

"Every Public Officer chargeable under Schedule 4 of this Act in respect of any fees, commissions, perquisites, or profits, not being salaries to be assessed under Rule 1, shall be subject to, and shall be assessed under the provisions of the fourth part of this Act, and such fees, commissions, perquisites, and profits shall be estimated on the receipts in respect thereof during the preceding year, ending on the 30th April, or on any other day in which the accounts of such fees, commissions, perquisites, and profits have been usually made up."

Agreed to.

Sections CXXXVI and CXXXVII were passed as they stood.

Section CXXXVIII was passed after an amendment.

Sections CXXXIX to CXLI were passed as they stood.

Section CXLII was passed after a verbal amendment.

Sections CXLIII to CXLV were passed as they stood.

Section CXLVI was passed after a verbal amendment.

Sections CXLVII to CLXXIX were passed as they stood.

Section CLXXX was passed after amendments.

Sections CLXXXI to CLXXXIII were passed as they stood.

Section CLXXXIV was passed with the addition (on the motion of Mr. Harington) of words limiting to one year the period for the institution of a suit to establish claims to immoveable property attached under this Act.

Section CLXXXV was passed as it stood.

Section CLXXXVI was passed after the omission of the exception in favor of a landlord's claim to arrears of rent due at the time of seizure of the goods or chattels of a defaulter.

Section CLXXXVII (which limited the landlord's claim to rent to six months) was omitted pursuant to the amendment in the preceding Section.

Sections CLXXXVIII & CLXXXIX were passed as they stood.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council adjourned at 10 o'clock on the Motion of Sir Bartle Frere, till to morrow morning at 7 o'clock.

Friday Morning, June 29, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq., and
H. B. Harington, Esq.,	Hon'ble Sir M. L. Wells.

INCOME TAX.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill.

Section CLXXX provided as follows :—

"Instead of proceeding by distress and sale, or by attachment and sale, or in case of failure to realise thereby the whole or any part of the duty assessed and payable under this Act, the Collector or Commissioners may, if they believe the defaulter is wilfully with-holding payment of the arrears, or has been guilty of any fraudulent conduct in order to evade payment, issue their warrant for the arrest of such defaulter, and such warrant shall be of the same effect as the warrant of any Court of the district, and shall be executed in like manner. Such warrant shall specify a term of imprisonment in the Civil Jail, to be appointed by such Collector or Commissioners, which shall in no case exceed two years ; nor a longer period than six months, if the arrear does not exceed five hundred Rupees, or a longer period than three months if the arrear does not exceed fifty Rupees."

THE CHAIRMAN moved the omission of all the words from "believe the defaulter" to the end of the Section, and the substitution of the following :—

"think fit, issue a warrant for the arrest of such defaulter. Upon such warrant, the Officer charged with the execution thereof shall bring the defaulter with all convenient speed before such Collector or Commissioners. If the defaulter shall not then deposit in the hands of the Collector or Commissioners the full amount of the arrears of duties under this Act, due and payable at the time of issuing such warrant, or make such arrangement for the payment of the same as shall be satisfactory to the Collector or Commissioners, or satisfy the Collector or Commissioners that he has no present means of paying the arrears, and that he has reasonable excuse for not having paid, such Collector or Commissioners may send him to the Civil Jail, there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall in the mean time pay the full amount of the said arrears. Provided that the time for which a debtor may be confined in Jail under such warrant shall not exceed three Calendar months when the amount of such arrears shall not exceed fifty Rupees, or six Calendar months when such amount does exceed five hundred rupees, or two years in any other case. Provided also that such imprisonment shall not extinguish the liability to pay such arrears, but all property then belonging to the defaulter or afterwards acquired shall be liable to be distrained or attached under the provisions of this Act in satisfaction of such arrears, or of so much thereof as shall remain unpaid, as if no imprisonment had been ordered."

MR. HARINGTON observed, with reference to that part of the amendment which provided that imprisonment should not extinguish the claim, that the Code of Civil Procedure provided that, when the amount of the decree did not exceed a certain sum, imprisonment should have that effect, and it might be a question whether the same provision should not be maintained in the present Bill. The subject had been considered by the Select Committee, and the Section, as now drawn, allowed a party to be imprisoned only when he wilfully refused to pay the tax or was guilty of any fraudulent conduct in respect of it.

SIR MORDAUNT WELLS said, he thought that, in cases of fraud, imprisonment ought not to extinguish the debt due to the Crown. Otherwise you would have combinations in districts to resist the payment of the tax, and although such persons might be willing to subject themselves to imprisonment, unless they were compelled to pay the Income Tax when they came out of jail, they would succeed in defeating the Government. Of course, with regard to parties who could give satis-

factory evidence of their inability to pay, the Collector or Commissioners would not be empowered to send such persons to jail, as mere poverty ought not to be treated on the same footing as wilful non-payment and fraudulent concealment of property.

THE CHAIRMAN said, it was quite different in the Code of Civil Procedure, which related to small debtors, whereas the Section now under consideration made provision for debts to Government. A similar provision was allowed in the Small Cause Courts Act for the Presidency Towns.

SIR MORDAUNT WELLS said, it would be the interest of Government not to seize the person of a defaulter if they could get his money.

SIR BARTLE FRERE said, he would put it to the Honorable Member for the North-Western Provinces whether, as remarked by the Honorable and learned Chairman, there was not a considerable difference between the Code of Civil Procedure and the present Bill. A small debtor might be a pauper. The theory of the present Bill, however, was to impose a tax on incomes: no pauper could be taxed. A person had no business to spend that portion of his income which the Government claimed under this Act, and if he did not pay it to Government, his refusal or neglect to do so must clearly proceed from perversity and not from poverty.

MR. WILSON said, the new Clause appeared to him considerably to mitigate the old one, and was restricted to those cases in which the Collector had reason to believe that the defaulter had no immediate means of paying the amount of the claim. The provision merely was that the defaulter might be sent to jail if he could not satisfy the Collector of his inability to pay.

The Motion was put and carried, and the Section as amended, then passed.

THE CHAIRMAN then moved the introduction after Section CLXXXVIII of the following new Section regarding the priority of Government claims over all other claims :—

"The claim of the Government for all sums payable for the said duties shall have priority over all private claims in administering the assets of any deceased person by his representatives, or of any bankrupt or insolvent by his assignee. Provided that the said duties shall not be claimed under this Section for more than one year."

Agreed to.

Section CXC was passed as it stood.

Section CXCI (which required separate accounts to be kept at the Government Treasuries of the three per cent. and one per cent. duties) was passed after an amendment making the Section applicable only to the one per cent. duty.

Section CXCII provided as follows :—

"Separate accounts shall also be kept at the said Treasuries—

"*1st.*—Of such sums paid in on account of the said one per cent. duty, as shall have been assessed upon persons residing in, or carrying on business in, or upon any house or land in any Presidency Town or any Station in the Straits Settlement."

"*2nd.*—Of such sums paid in on account of the said one per cent. duty as shall have been assessed upon any person residing in, or carrying on business in, or upon any house or land in any town or suburb not within the Presidency Towns or Straits Settlement aforesaid, wherein Act XXVI of 1850 shall be in force, and Commissioners shall have been appointed under that Act.

"*3rd.*—Of all sums paid in or on account of the said one per cent. duty as shall have been assessed upon any other person, or upon any other house or land in each district."

MR. SCONCE said, he had doubts of the propriety of the distinction drawn by the 2nd Clause of the Section between Towns brought under the operation of Act XXVI of 1850 and others.

THE CHAIRMAN said there would be some difficulty in ascertaining and apportioning their proportion of duty to districts which might be incorporated with the Presidency Towns.

SIR MORDAUNT WELLS said, he must confess that this Clause would cause much embarrassment to the Government. He did not want to see the one per cent. fund in the hands of any other body than the Government. They had a perfect machinery for carrying out the principle which had already been affirmed by the Council on

the motion of the Honorable and learned Chairman. He could say from his own knowledge that there were many persons perfectly willing to let the Government have the management of the fund ; whereas, if any attempt were made to put it in the hands of Local Boards or any other body, the object of the tax would not be understood, and great dissatisfaction would be the consequence.

SIR BARTLE FRERE said, he thought that, if the Honorable and learned Judge were acquainted with the action of the Municipal bodies constituted under Act XXVI of 1850, he would agree with him (Sir Bartle Frere) as to the propriety of entrusting the management of such a fund to this agency. By doing so he had no apprehension that the effect would be a frittering away of the fund, for he could speak from his own experience that wherever the principles of Act XXVI had been fairly carried out the action of the Municipal bodies had been found most beneficial.

SIR MORDAUNT WELLS said, he had no objection to Government employing whatever body they pleased, provided they were to be the responsible and controlling authority : what he objected to was to have on the face of the Bill that any Municipal body whatever was to have the management of this fund.

MR. FORBES said, the Act had been greatly improved by the amendment of the Honorable and learned Chairman, namely, the substitution of the words " reproductive public works" for the words " local purposes" in Section III. He had no doubt that, if the Municipal bodies were to be employed in carrying out the objects of this tax, they would be found highly useful. But now that the works to which the tax would be applied were to be reproductive public works only, he thought that the amendment in Section III rendered unnecessary the retention in the present Section of the words which referred to Act XXVI of 1850 and to the Municipal Commissioners appointed under that Act. The Municipal Commissioners appointed under that Act would be very proper authorities to be entrusted with the execution of works for purely " local proposes," such as might be carried on within any town or village, but reproductive public works implied probably something extending over a much larger area, and Municipal Commissioners might not be so well fitted to superintend the construction of a line of road or the building of a bridge at a distance from the sphere of their ordinary local operations.

MR. WILSON said, he thought there would be some difficulty in retaining the words as they now stood. In England it had been found impossible to separate a Revenue District from an Income Tax District; and he did not think that the term District as used in the present Bill had a special meaning. He proposed the introduction of the following Clause, which he thought would carry out the views of his Honorable friend opposite (Sir Bartle Frere) and of his Honorable and learned friend (Sir Mordaunt Wells) :—

" A separate account shall be kept of the duty paid in respect of the said one per cent. duty, which shall accrue from the dividends or interest paid upon the Government debt and from the salaries of public officers and from the profits of any Railway or other public Company whose profits shall be derived from different parts of India, or of which any part of the profits is derived from a place other than that at which its head office is situate, and such portion of the one per cent. duty shall be appropriated to the different Governments of India, to be applied for the execution of public reproductive works which have been duly sanctioned, according to their discretion, and that such appropriation shall be made to each local Government in the proportion in which each Presidency or Lieutenant Governorship or Province under a Chief Commissioner shall contribute to the whole amount of the duty raised under this Act."

After some further discussion—

THE CHAIRMAN thought it better to decide how the one per cent. was to be appropriated before deciding how the accounts were to be kept. He would therefore propose that the consideration of Section CXCII be postponed until after that question was decided.

The Motion having been carried, Mr. Wilson's new Section was then proposed from the Chair.

MR. HARINGTON said, in adopting the amendment which had been introduced in Section III of the Bill, the Committee had affirmed a very great and important principle, and by declaring that the amount of the tax collected under the Section in question, should be appropriated, not to local purposes at the discretion of particular parties, but at the discretion of the Government of India to general reproductive works, the objection which he (Mr. Harington) entertained to the Section, and which he had stated on a former occasion, had been, to a considerable extent removed. The Committee had, in fact, made the portion of the tax which would be collected under the Section imperial revenue equally with the rest of the income which would be derived from the operation of the Bill, provision only being made that the money should be expended in a particular way, that is, on general reproductive works. Such being the decision of the Committee, he thought that they should be careful not to place any unnecessary or too great restrictions upon this exercise of the discretion, proposed to be given to the Executive Government. In laying down such rules as had been suggested it appeared to him that they would be refining too much, and that they should run the risk of hampering the Government in a manner which, in practice, might prove very inconvenient. What the public might fairly require to know was the aggregate sum collected on account of the four per cent. duty, and that one-fourth of that sum was strictly appropriated to reproductive works of a general nature. He agreed with the Honorable and learned Judge, (Sir Mordaunt Wells) that the rest might safely be left to the Executive Government. It had been suggested by the Honorable Member for Madras that the aggregate sum collected on account of the one per cent. duty should be appropriated to the different Presidencies in proportion to their several revenues. The rule appeared a simple and equitable one, and it seemed to him (Mr. Harington) that it might be properly adopted.

After some further discussion, Mr. Wilson's proposed Section was put and carried.

SIR MORDAUNT WELLS then moved the insertion of the following Section, which he thought would cover every thing that was necessary, and get rid of the whole difficulty :—

"The whole of the residue of the sums derived from the said one per cent. duty shall be appropriated to each Presidency, Lieutenant Governorship, and Province, to the extent contributed by such Presidency, Lieutenant Governorship, and Province, and shall be expended by the local Governments and Chief Commissioners thereof in reproductive public works duly sanctioned as aforesaid in the various districts under them as nearly as may be in proportion to their respective contributions thereto."

Agreed to.

THE CHAIRMAN moved the omission of Section CXCII, and the substitution of the following :—

"Separate accounts shall also be kept of such sums paid in on account of the said one per cent duty as shall have been assessed upon persons residing in or carrying on business in or upon any house or land in any Presidency Town or any Station in the Straits Settlement, or in any District."

Agreed to.

Sections CXCIII to CCII were then omitted as unnecessary, in consequence of the two new Sections severally adopted on the motions of Mr. Wilson and Sir Mordaunt Wells.

Sections CCIII to CCXII were passed as they stood.

Section CCXIII (which prescribed the penalty for making false returns of profits or of the value of lands) was passed after a verbal amendment, and with an amendment making it applicable to the making of all false returns.

Section CCXIV was passed as it stood.

Section CCXV was passed after a verbal amendment.

Section CCXVI was passed as it stood.

Section CCXVII prescribed a penalty not exceeding five hundred

Rupees for any offence under Section LXXII relating to composition.

THE CHAIRMAN moved the following addition to the penalty :—

"and treble the duty justly chargeable in respect of all the sources of his income."

The Motion was carried and the Section as amended then passed.

Sections CCXVIII and CCXIX were passed as they stood.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council adjourned at 10 o'clock, on the Motion of Sir Bartle Frere, till to-morrow, at 11 o'clock.

Saturday, June 30, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

The Hon'ble Lieut.-Genl. Sir J. Outram,	H. B. Harington, Esq.,
The Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
The Right Hon'ble J. Wilson,	A. Scoonce, Esq., and
	The Hon'ble Sir M. L. Wells.

BOUNDARY MARKS (FORT ST. GEORGE).

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "for the establishment and maintenance of Boundary Marks and for facilitating the settlement of Boundary Disputes in the Presidency of Fort St. George."

EMIGRATION TO NATAL.

SIR BARTLE FRERE moved the second reading of the Bill "relating to Emigration to the British Colony of Natal."

The Motion was carried, and the Bill read a second time.

EMIGRANT VESSELS.

SIR BARTLE FRERE moved the second reading of the Bill "relating to vessels carrying Emigrant passengers to the British Colonies."

The Motion was carried, and the Bill read a second time.

KOONCH AND CALPEE.

MR. HARINGTON moved that the Bill "to remove the Pergunnahs of Koonch and Calpee, in Zillah Jaloun, from the operation of the general Regulations," be read a third time and passed.

The Motion was carried, and the Bill read a third time.

ARMS AND AMMUNITION.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to make perpetual Act XXVIII of 1857 ("relating to the importation, manufacture, and sale of arms and ammunition, and for regulating the right to keep or use the same)"—

MR. HARINGTON said, before they went into Committee on the Bill, he thought it right to mention to the Council that he had received a letter on the previous evening from the Secretary to the Government of the North-Western Provinces, in which he was reminded that Act XXVIII of 1859, which extended the duration of the original Arms and Ammunition Act for the further period of six months, would expire to-day ; and he was urged to take immediate steps, in order that what had already been done towards disarming the Native population of the North-Western Provinces might not be rendered abortive or of no effect by the cessation of the law. [Mr. Harington here read an extract from the letter received by him.] He went on to say that it was the knowledge that the present law was about to expire which had led him to give notice in the Orders of the Day, published on Thursday last, of his intention to move to-day the suspension of the Standing Orders. It appeared to him very desirable, either that the Bill now in Committee should pass into law to-day in such form as the Council might in their wisdom determine, or if that could

not be done, then, in order to avoid an interregnum, that a temporary law should at once be passed. Of the two branches of the alternative, he thought there were many reasons why it would be better to have recourse to the former.

The Council then resolved itself into a Committee on the Bill.

Section XXVI (which was the exemption Clause) provided as follows :—

"The foregoing provisions shall not apply to—

"Officers, Non-Commissioned Officers, Warrant Officers, Soldiers, and Sailors in the Military or Naval Service of Her Majesty, in respect of arms and ammunition kept by them for use in the public service.

"Members of Volunteer Corps in respect of such arms and ammunition.

"Police and Revenue Officers and other persons in respect of arms and ammunition furnished by Government for use in the public service, or provided by themselves with the sanction of Government for such use

"Such other persons as the local Government may think fit to exempt from such provisions."

THE CHAIRMAN moved the substitution of the words "provisions of the last two Sections" for the words "foregoing provisions" in line 1.

Agreed to.

THE CHAIRMAN then said, it appeared to him that the Bill, as it now stood, fell short of the object for which it was intended, and he would propose to follow the advice given by the Honorable Member for Bengal on a former occasion that, before proceeding to legislate, we should clearly understand what was intended to be done. Now he (the Chairman) would ask, what was the object of this Bill? Was it a Police Bill to prevent people walking about armed, or was it for the purpose of disarming the native population, as had already been done by Government in the Punjab, Oude, and the North-Western Provinces? As the Honorable Member for Bengal had said last Saturday, the Bill, as it now stood, was not a disarming, but an arming Bill, for any man who had been disarmed under Act XXVIII of 1857 could now repossess himself of his arms, and the Magistrate had no power to take away arms from any person, unless he went armed and the Magistrate considered it dangerous to the public peace to allow such person to go armed or to carry arms. He (the Chairman) considered that the Bill ought not merely to prevent persons from going armed, but should enable the Government to disarm and to keep them disarmed, and to prevent them from even having arms in their possession. In the North-Western Provinces he believed many persons had been disarmed; was it the intention of the Government to allow them to keep arms in their houses? The old Bill prevented that, for Section IV empowered the Magistrate to take away arms from any person in whose possession they could not be left without danger to the public peace, and Section V prevented such persons from going armed—the first of these Sections had been left out of the present Bill. He did not know whether the Executive Government were satisfied that the necessity no longer existed for continuing the Clause, or that all the arms in the possession of the native population in those parts of the country where Act XXVIII of 1857 was put into force, and their arms had been taken away from them, should be allowed to arm themselves again. He would merely observe that, according to the Bill as it now stood, each man who had been disarmed might keep two or three fire-arms without any penalty whatever, and could only be interfered with if, according to Section XXXI, he had a larger quantity than in the judgment of the Magistrate could be left in the possession of such person without danger to the public peace. He (the Chairman) should therefore like to know from one of the Honorable Members who represented the Government, whether it was the intention of Government to disarm the country or merely to restrict the carrying of arms.

SIR BARTLE FRERE said, he thought he could satisfy the Council on this point. The Act passed in 1857, as the Council was aware, empowered the Executive Government to authorize any of its officers to make domiciliary

visits in search of arms. In the opinion of the Government and of its officers there was no necessity for continuing that power of making domiciliary visits. If at any future time there should be any apprehension of a likelihood of danger to the public peace, he was sure that the Government would come down and ask the Council for a restoration of that power, and he was equally sure that the public spirit of the Honorable Members of this Council would enable them to sanction the measure.

THE CHAIRMAN said, he thought it was a power which ought to be continued to Government. But if the Executive Government were satisfied that the power was not necessary, and did not want it, he did not see how the Legislative Council could compel them to take it. He wished, however, to introduce into this Section an exception in favor of Europeans. As to its being necessary to provide for disarming a European going about drunk with a gun in his hand and likely to do injury with it, every policeman had that power already; whereas, if this Bill were passed, he could not do so if the man showed a license. It was not therefore strictly a Police Bill, if the Police were to be prevented from taking away arms, as they ought to do, from any one who might be in an unfit condition to carry them. He did not see the slightest necessity for disarming Europeans. Nobody had ever shown that they had at any time made a bad use of their weapons. They were not in the habit of doing here what they did in Ireland, shooting at men from behind hedges. But if this were merely a Police Act why did it not extend to iron-bound *lathees?* A great deal of harm had been done with them. The natives in many parts of the country could not be trusted with fire-arms. He therefore saw reason for disarming them, but none for disarming Europeans. As a Police measure, this Bill would not be sufficient; whilst as regards Europeans, no statement had been made out to show that in any one single instance had it been necessary to take away fire-arms from any one of them, on the ground that it was dangerous to allow him to keep them. Then why should Magistrates have the power of disarming them? He therefore proposed the insertion of an exception to the effect that nothing contained in this Act should extend to Europeans, Americans, or Eurasians. The Honorable Member of Council to his right (Sir Bartle Frere) had suggested the insertion of words empowering Government to exempt wealthy natives and others who might object to the indignity of being compelled to take out a license. He (the Chairman) had no objection to the insertion of those words. We could not say what particular persons amongst the natives were fit to be entrusted or not, and therefore could leave this power as to individuals in the hands of the Government But we could say that there was a certain class, namely, Europeans which could be trusted, and he therefore considered it his duty, as a Legislative Councillor, not to pass this Bill without the exception which he had proposed. The cry of class legislation had been raised. To cite precedents, however, in support of his proposition, he would mention that when the Act of 1857 was put in force in Shahabad, Europeans and Eurasians were exempted from its operation. When the Act was extended to Pegu, Europeans were exempted from the provisions of Sections I to V of the Act. This was class proclamation, and surely there was no difference in principle between it and class legislation. All the arguments brought forward against the exemption appeared to be nothing more than this—"Don't except Europeans as we wish them to be subject to the same law that we consider necessary to pass for the Natives. Let us make no distinction." But, he would ask, did any one here wish or intend to say that Europeans ought to be disarmed? The Honorable Member for Madras indeed had made some observation which might be regarded in that light. But what did the Honorable Member say? Why, he mentioned something about some Europeans having committed outrages, and thought that a sufficient ground for the whole body to be included in the Bill. Now he (the Chairman)

would venture to say that no argument could be weaker or more untenable than that advanced, and he would therefore ask if no better reason could be assigned for subjecting Europeans to the provisions of the Act. In Shahabad and Pegu, as he said before, Europeans had been exempted by Government from the provisions of Act XXVIII of 1857, which was merely a temporary measure. Now that it was to be made permanent - was there greater reasons why Europeans should be included? If, since the passing of that Act, no extraordinary circumstance had taken place to induce the Government to suppose that the exemption should not be continued, he (the Chairman) thought that the exemption had better now be made applicable as well to Americans and Eurasians, as to Europeans. He therefore moved the insertion of the following Clause: —

"Nothing in the provisions of the last two Sections shall extend to any European, American, or Eurasian.

SIR BARTLE FRERE said that, with regard to the object of the Bill, he could add but little to what he had stated when the subject was discussed on the previous occasion—it was certainly not the object of Government, as surmised by the Honorable and learned Chairman, to re-arm the people. The object was to continue and make permanent the provisions of the Disarming Act of 1857, as far as was necessary for a permanent police measure. The Act of 1857, as he (Sir Bartle Frere) had, on a previous occasion, pointed out, was calculated to meet the exigencies of a time of great public danger, and the Government of India was of opinion that many of the provisions of that Act, justifiable and no doubt necessary at the time, might now be dispensed with. He need only instance the power of permitting native police officers to make domiciliary visits in search of arms. It was considered by the Executive Government that the powers asked for in the present Bill were sufficient, if properly used, to ensure the complete disarmament of the country.

The Chairman

The Honorable and learned Chairman had expressed a strong opinion that the provisions of the present Bill would not be effectual for such a purpose. This opinion was not shared by the Executive Government, who did not think it proper to ask the Council for larger powers, or a more stringent Bill than was absolutely necessary; but he (Sir Bartle Frere) could assure the Council that if, in working the Bill now before them, it should be found in dequate to effect its object, no time would be lost by the Executive Government in applying for larger powers, and he (Sir Bartle Frere) felt confident that, in such case, the Council would not refuse to grant them.

The Honorable and learned Chairman had next found fault with the Bill because its provisions would not enable the Magistrate to secure the public against persons carrying arms, who were, in the Magistrate's opinion, dangerous to the public peace, but who, the Honorable and learned Chairman seemed to hold, could not be disarmed if they were protected by a license. He (Sir Bartle Frere) would not venture to differ from his Honorable and learned friend on the legal efficacy of any provision in the Act, but the Magistrate, who could grant, could at any time revoke a license, and he (Sir Bartle Frere) believed that, even if it were not so, the general regulations would fully justify the Magistrate in apprehending such a person, and holding him to bail for his good behaviour, whatever might be the terms of the license which he held.

The Honorable and learned Chairman had next asked why the Act did not apply to "lathees," the iron bound clubs, which might be called the national weapon of Bengal? No doubt circumstances might arise which might render it necessary to legislate for this class of weapons also; but it did not appear to the Executive Government of Bengal that this necessity had arisen, and until it arose, there were obvious objections to embarking in legislation which might affect the walking sticks of the whole community.

THE CHAIRMAN begged to correct the Honorable Member; he did not object to the Act, because it had not extended to "lathees."

SIR BARTLE FRERE regretted he had misunderstood the Honorable and learned Chairman's remarks, and would address himself to the main question. The Honorable and learned gentleman had asked—"Why should Europeans be disarmed?" He (Sir Bartle Frere) begged to deny that it was in the remotest degree the object of the Bill, or that it would be the result of the Bill, either to disarm Europeans or to diminish in any degree the facilities they now possess for carrying arms. He begged the Council would look dispassionately, and all prejudice apart, at the provisions of the Bill, and contrast them with the law as it now stood. In the first place, by the present law, to which, as he understood, neither of his Honorable and learned friends objected, Europeans as well as Natives were liable to have their houses searched and their arms removed, even by inferior Police Officers. Under the Bill now before the Council, this liability would exist no longer, and Europeans as well as Natives, against whom no special cause of suspicion existed, would be able to keep in their own houses, and for their own defence, any amount of arms they wished.

Then, with regard to carrying arms abroad, the Bill before the Council provided two modes by which any European or respectable Native might secure himself the power of carrying any arms he pleased unmolested. He might obtain a personal exemption, or he might obtain a license on payment of one rupee. The Act gave power to the Magistrate to remit the payment of the rupee in "any case in which he may be satisfied of the inability of the person applying for the license to pay the same, or for any other cause." The Magistrate might thus grant a license to any poor European without the payment of any fee. And as regarded the fee generally, if it were considered by the Council to be objectionable, he (Sir Bartle Frere), for his own part, would not wish to retain it. The European, then, rich or poor, might get an exemption, or he might get a license by paying one rupee, or even without paying it But suppose the European went out armed without exemption and without license, what did the Act then provide? Why, it provided that even then he could not be disarmed, unless he was considered dangerous to the public peace. And did any Honorable Member really believe that any European who was not really considered dangerous to the public peace could ever be disarmed under these provisions? No such complaint had ever been made under the existing Act, which contained none of the facilities for obtaining licenses provided in the one before the Council. If any Honorable Member could lay his hand on his heart and say that he, in his conscience, believed that, under the provisions of the Act before them, any inoffensive European could ever be stripped of the arms necessary to his defence, and be left unarmed and defenceless to the fury of a savage mob, he (Sir Bartle Frere) would give up the whole question.

The Honorable and learned Chairman had laid great stress on the exception of Europeans in the Proclamations extending the Act of 1857 to Pegu and Shahabad. He (Sir Bartle Frere) would not shelter himself under the argument that these Proclamations were issued by the Local Government.

THE CHAIRMAN begged to correct the Honorable Member. The proclamation as to Pegu was issued by the Government of India.

SIR BARTLE FRERE repeated, he did not wish to insist on the argument, but he would contend that there was an essential difference between the case of a proclamation extending a highly penal Act to a disturbed district, and a general law which it was intended to make a permanent measure of police. But, even if it were otherwise, we were now considering the intrinsic right and wrong of the matter, and this was not a question to be decided by precedent.

The Honorable and learned gentleman had said little in answer to the arguments against class legislation in

general. He had hardly noticed them. In discussing this question elsewhere, those arguments had been treated as a delusion, but had never been controverted. It was not necessary for him (Sir Bartle Frere) to repeat those arguments so well known, and he believed so unanswerable. The speech of his Right Honorable friend opposite, at their last discussion on this Bill, had, he thought, set the question at rest as far as this Council was concerned. But he (Sir Bartle Frere) would ask the Council to consider carefully the difficulties and inconsistencies in which they would become involved the moment they quitted the broad principles so well laid down by his Right Honorable friend (Mr. Wilson). The Honorable and learned Chairman proposed to insert an exemption in favor of all Europeans, "Americans, and Eurasians." He (Sir Bartle Frere) need not remind the Council of the difficulty so often pointed out of deciding what classes were included in the last named class. The exception would certainly not include large bodies of native Christians every way worthy of the same privileges, but he would ask why should not the exemption include men of the same nationality as ourselves, and differing only in accident of birth place. Men of English, Dutch, or German descent, who were neither Europeans, Americans, nor Eurasians, but who, if your exemption depended on the country of their birth, must be classed as Africans, because born and bred in the Southern part of the African continent. Then there were our vast Australian colonies every year becoming closer connected with India. Are our fellow-subjects born in Australia to be excluded from this so-called privilege, because they are neither "Europeans, Americans, nor Eurasians;" but let us confine our attention to India itself. Among the signatures to the requisition for the public meeting, which presented the petition now before the Council, appear the names of some leading Armenian merchants, gentlemen as well entitled as any of Her Majesty's subjects to enjoy all the privileges of our countrymen in this land. Are you going to abandon them and exclude them from this exemption, because they are neither "Europeans, Americans, nor Eurasians?" This Section might be enlarged, but he (Sir Bartle Frere) would ask the Council if he had not said enough to show the endless inconsistencies into which you are betrayed directly you leave the straight and well-marked path pointed out by Her Majesty's proclamation? He would not venture in the presence of his Honorable and learned friends to dwell on points of constitutional law, but would ask whether the whole history of our nation has not been one of struggle for equal rights to all classes of British subjects? We have within the last half century expended largely the blood and treasure of our nation to get rid of slavery, do not let us, for an object which had been shown to be purely imaginary, enter on a course which is marked by some of the worst features of slavery. Let us be just to all, and carry out to the best of our power the liberal and equal principles laid down in Her Majesty's proclamation.

SIR MORDAUNT WELLS said, to his astonishment he had heard a Member of the executive Government say, for the first time that day, that it was the intention of the Government to abandon one of the most important Sections of the Act of 1857, namely, that which related to the search for arms. Although the Bill had been under discussion before, nothing had been said on the subject. On the last occasion he understood that the object sought to be attained by the Bill as altered was substantially to carry out the legislation of 1857, and he had said that on that understanding he was prepared to give it his support. He had clearly understood that the legislation of 1857 would remain intact. He was now told that, although an Arms Act was now about to be passed, it was not considered desirable by Government to make provision for domiciliary visits in search of arms. There were thousands of sepoys in the North Western Provinces who had committed dreadful atrocities during

the mutinies. Was it intended that each of these men should be allowed to hang up his rifle in his cottage and the Magistrate or other official to have no power to take it away from him, thus allowing them to husband their resources till a fit occasion called for their use? If Government would say that Oude was completely disarmed, that there were no arms buried which under this Act, might be dug up and hung up in the cottages of their possessors, he would not oppose the wishes of the Government, but leave the responsibility with them. He could not however understand the policy which would permit thousands and ten thousands of the old sepoys, who were mutineers, men whose atrocities ought never to be forgotten, to have arms. Surely it could not be said that the struggle was one to avenge oppression. On the contrary, they had been too kindly treated, he might say pampered, by an over-considerate Government. The struggle was nothing more or less than a religious struggle, having for its object to overthrow the British rule and to exterminate the Christians. Up to the present day there were, he was certain, thousands and ten thousands of such mutinous men scattered about in Oude and in Cawnpore, and were these men to be allowed to have in their possession their rifles and their spears ready to be taken out when occasion offered? Was there any part in the Bill that would allow the Magistrate or any officer to enter the cottage of one of these men and take away his rifle? The Bill was nothing without that provision. If the executive Government would say, however, that they were satisfied and really believed that the work of disarming had been completed, and that there were no more arms to be taken away, he would give his support to the Government in passing the present measure in its present form. But with any thing short of that he would not take the responsibility. He would ask whether an Act, which had been carefully considered by such men as Mr. Dorin, the then Vice-President of this Council, the late Chief Justice, and Mr. Grant, the present Lieutenant-Governor of Bengal, and which, after having passed a Committee of the whole Council, had been twice re-committed, should be allowed to get into the hands of the Honorable Member for Bengal and the Honorable Member for the North-Western Provinces, and to be converted by them into a totaly different Bill, for no other reason than that it was to be a permanent measure, which he should have thought was a greater reason why it should not be altered in so extraordinary a manner. Was it safe, he would again ask, to allow such people to arm themselves? Were thousands of sepoys living together in one village, each to be allowed to keep his rifle, and, under no circumstances, to be deprived of it, unless he carried it to the street without a license? Was the Government prepared to say that a search for arms should not be allowed, because each man had only one gun? How did they know by what means arms would be brought into the district, and a hundred thousand stands of arms might not be collected in this way? If each man could pay his two or three Rupees annually, he might carry out as many arms as he pleased; and then, if another mutiny broke out, what would the Government do.

But what was the reason assigned for giving up the power of search provided for by the Act of 1857? Because, as we had been informed by the Honorable Member for the North-Western Provinces, the Government could not trust its own officers, who had committed great oppression under this power. The Police Officers in India not fit to be trusted forsooth! But surely when they made that admission that they could not confer on the Police such a power as regards natives, what right had they to clothe these officers with the exercise of any powers as regards Europeans? He (Sir Mordaunt Wells) had said that he would stand by the legislation of 1857. But if we were going to strike out the main provision of the law of 1857, by allowing natives to keep arms, and at the same time to deprive the European of his right to keep and carry arms without a license, he (Sir Mordaunt Wells) must say that he was entirely opposed

to it. He denied that the Legislature had any power to take away those rights. The Bill of Rights was as much in force in India as in England, and by it Englishmen had a right to carry arms, and this Council had no right to fritter away those rights. Were they to deprive Englishmen of that right, because it became unnecessary to place a restriction on the natives, which restriction had been brought about through their own acts? Could we do so after having experienced such frightful results as had been brought about by the late mutiny, which he would say was not a military mutiny, but a general and deep laid conspiracy to exterminate the English from this country? It could not be said that such acts of violence had been produced by an arbitrary rule. On the contrary, the native army had been under a very humane Government. Yet they rose and murdered their Officers with their wives and children. It is now clear that the mutiny was not a mere military mutiny? It was entirely a class mutiny, a caste and religious rising of the Mahomedans and Brahmins for the purpose of exterminating the Europeans from this country. And were you to allow thousands of such men to keep arms? The idea was preposterous and absurd in the extreme; and it was not without considerable anxiety that he said that, if such dangerous characters were to be allowed to keep arms, some day or other it would not at all be unlikely to see them abuse that privilege. Independently of this, other serious consequences might arise, which it was their duty to avoid. For instance, what police force would you have to prevent an European Engineer living in some isolated district being attacked and plundered by a body of these armed men? And yet forsooth the European Engineer was to be required to take out a license to defend himself. He said, again, that it was impossible for him to support this measure. If, however, it were pressed, he would divide the Council upon it. In after days, when he might not be here, he should not wish it to be said that when such an omission was proposed he had not strenuously endeavored to oppose such an alteration.

In making perpetual the Act of 1857, it could never have been the intention of the Government to expunge the principal Sections of that Act, and by doing so, to render it, as the Honorable Member for Bengal had observed, an Arming instead of a Disarming Act. He (Sir Mordaunt Wells) would prove that such a thing was never contemplated, and he would prove it, notwithstanding the pretence which had been set up by the Honorable Member for the North-Western Provinces, that it was intended to make it a Police Bill. If that were the case, why should the Honorable Member for the North-Western Provinces come forward with such an absurd proposition, that the people in Oude, in common with others, might now be allowed to take out a license to keep arms, because he did not think that the officers of Government were fit to be trusted. He would direct the attention of the Council to the following extract from a speech of the Honorable Member for the North-Western Provinces:—

> "Large power of exemption was vested by it in the Government, and he could scarcely contemplate the possibility of the provisions of the Act being applied to any respectable European, except as regarded the manufacture of certain articles, which he thought, all would admit was proper, and the registration of arms, which could put no one to any great inconvenience."

This was what happened in August 1859, when the Honorable Member brought in a Bill to make perpetual the Act of 1857. He would also read the observations of his Honorable and gallant friend (Sir James Outram) in the debate which took place on the same Bill. His Honorable and gallant friend said:—

> "He therefore thought that it was but right to prevent the recurrence of such cases by investing Magistrates with the power of disarming, at their discretion, any such persons as they might consider unfit to be trusted with dangerous weapons. This Bill did not prevent every European from possessing arms.

It was made to meet the case of all classes of our subjects, and as he understood, it would seldom be enforced against Europeans, and the Governor-General had the power of exempting any respectable and trustworthy person from its operation. This Bill was intended to be enforced only against those who might be considered dangerous characters."

He believed every word of that most significant extract, and he need not say that he was quite willing to allow that, if any European were a dangerous character, there ought to be some power. But how stood the matter now? It was proposed to allow every one, who took out a license, to carry arms, whether he was a European or native, and whether he was in an unfit state to carry them or not. It was also said that, because the Government had no confidence in its own Officers and because the Section in the Act of 1857, which gave the right of search for arms had been used as an instrument of oppression, therefore that Section was now to be omitted, and thousands of sepoys in Oude were to be allowed to keep arms without any power to the Magistrates to deprive them of the same. Now he would venture to ask the Honorable Member for the North-Western Provinces, was it just or was it fair that you should propose to entrust to such officials the power of taking away arms from a European? Did you propose to subject Europeans to officers whom, by your own admission, you cannot trust? The officials of courts, of which no words can express their corruption, where, from one end of the land to the other, perjury and bribery reigned triumphant? Why, when he was present at the sitting of the Indigo Commission the other day, he heard a Clergyman say that his petition of complaint was torn up before his eyes, because he would not give a bribe to one of the native officials. He had already alluded to the speech of the Honorable Member for the North-Western Provinces, in which he said that "he could scarcely contemplate the possibility of the provisions of the Act being applied to any respectable European." Were you not now going to apply the Act to all Europeans? In that same speech the Honorable Member had quoted a passage from a speech delivered in this Chamber on the 5th September 1857, when Act XXVIII of that year was passing through a Committee of the whole Council. From the passage referred to, it was clear that the late Chief Justice was opposed to making it compulsory on Europeans taking out licenses. The Chief Justice said—

"He entirely acquitted many of the critics of this Bill of having read it. For instance, he had seen a complaint that Europeans were to be compelled by it to take out a license to possess arms; whereas the Council well knew that the provisions to that effect had been struck out of the Bill some weeks ago."

And now, without the authority of Government, the Select Committee had inserted provisions in this Bill, which had, two years ago, been condemned by the whole Council. What was to be the position of India if we were to have such legislation? He (Sir Mordaunt Wells) had confidence in the Executive Government, and he would sooner see this Council swept away to-morrow and leave the legislation of the country in the hands of the Executive Government. The Honorable Member, in legislating for his peculiar constituents in the North-Western Provinces, which he represented, seing that an Act which had, after mature deliberation, been passed by this Council had worked well, now thought it necessary to alter that Act. In proposing such a measure, however, the Honorable Member could not see why he should exclude Europeans, and instead, of making the Bill more perfect, he had, by omitting one of its best Sections, rendered that Act useless. Now he would very much wish to know what information had been laid before the Select Committee for the adoption of this absurd change, or why the Select Committee should alter the Act at all. It was said that class legislation was unfair. But he would ask the Council, was it fair to deprive Europeans of their right to carry arms wherever they pleased, or to place them under any restriction whatever, because the natives had rebelled? Such a measure was not

only unconstitutional, but it was opposed to the feelings of the Europeans. The Honorable Member had, on his own responsibility, inserted the obnoxious Clauses in the present Bill, on the ground that several outrages had been committed, and that bad Europeans had spread all over the country. This must have been a very rapid spread, for only in August 1859 the Honorable Member declared that all Europeans could be entrusted with arms. The fact was that the Honorable Member could not carry the alleviating clause, which would free the natives from the oppressions of the corrupt Courts, by permitting them to keep fire-arms in their houses, without subjecting Europeans also to the same machinery—the system of licensing, which, he was glad to say, was not to become the law of the land. He would again ask, what right the Council had to deprive Englishmen of their constitutional privileges? If he were to be told in reply that it was necessary to include Europeans in the Act because their exemption would give offence to the Natives, he (Sir Mordaunt Wells) would call that class legislation, he would call it unequal legislation, and unfair legislation. What right have you to deprive loyal subjects of such a right? His Right Honorable friend had referred to the Irish Coercion Bill. But that Act was not a permanent measure, and no Arms Act had ever been made permanent, as this Bill was proposed to be made, but was generally renewed from year to year. Where did the Honorable Member for the North-Western Provinces gain the experience and knowledge of legislation to embolden him to do what the British Parliament shrank from doing? He (Sir Mordaunt Wells) had before him the last Bill passed after the last outbreak, and he observed in it an excellent provision, which he thought ought to be applied to this country, that all districts were forced to pay for damage done in them by rebels. To extend the principle of that provision to this country—to propose the enactment of such a provision, and thereby to make it understood throughout India that the inhabitants of a district would be required to pay the expenses of a mutiny or revolt in that district—would be an act worthy of the Executive Government. But to fritter away the rights of loyal subjects, and to place them on an equality with rebels, was a course which it was unworthy of the Executive Government to pursue, and unworthy for this Council to sanction. Europeans in the Mofussil did not stand in the same position as we did here, and we ought to take care of their interest, which we would not be doing, if we subjected them to the native Police Officers of the Mofussil. In making these observations he wished it to be distinctly understood that it was not his intention to cast the slightest blame on the Magistrates themselves. The Members of the Civil Service were men of high moral worth and ability, but many of themselves had told him that, with the materials they had to work with, they were completely paralyzed.

SIR BARTLE FRERE rose to say a few words in explanation.

Without entering into all the many topics to which his Honorable and learned friend had adverted, he would refer to the picture he had drawn of provinces in which ten thousand sepoys hung up, each in his cottage, his musket or rifle, and were supposed to be not amenable to the authority of the Magistrate. He would only refer His Honorable and learned friend to Section XXXI of the Bill before them, which he believed would be ample for every practical purpose; but if it were not thought so, it was open to his Honorable and learned friend to move a Clause extending the Magistrate's power to search for arms; but he (Sir Bartle Frere) must reserve to himself the power to vote against it, if it went beyond what was considered absolutely necessary by local officers, for he saw serious objections to the granting such powers, unless imperatively called for.

The charges of his Honorable and learned friend, that we were proposing a light Act for Natives and a heavy one for Europeans, would be

sufficiently answered if the Clauses of the Bill before them were compared with those of the Act of 1857. It would then be seen that the present Bill, where it was not identical with the Act of 1857 was, as it now stood, in every respect a mitigation of that Act, and that like that Act it applied equally to Natives and Europeans. There was no single provision now in the Bill which applied more severely to either class than the Act of 1857, of which the Honorable gentleman had stated his approval; but there were many points in which the Act, as regarded both classes, was essentially mitigated.

His Honorable and learned friend was also mistaken in stating that this Bill was brought in without the sanction of the Executive Government, and that he was also mistaken in attributing the provisions of which he disapproved to the Honorable Member for the North-Western Provinces. If the Honorable and learned Member referred to the proceedings of the Council, he would find that the Bill was originally brought in on behalf of the Supreme Government by Mr. Harington, who was then acting as a Member of that Government, and that in August it was referred to a Select Committee, consisting of Mr. Harington, Mr. Sconce, Mr. LeGeyt, and Sir Charles Jackson. In the absence of the other two Members of the Select Committee the Bill was reported by Mr. Harington and Mr. Sconce so that it had neither been originally brought in without the sanction of the Supreme Government, nor were its provisions the individual opinions of his friend, the Member for the North-Western Provinces.

Then the Honorable and learned gentleman had asked why were the penal provisions of the Act of 1857 given up? And he (Sir Mordaunt Wells) had answered his own question by saying, "Because Government cannot trust its servants!" And he had repeated this more than once, alleging as the Government's reason for mitigating the provisions of the Bill of 1857, that the Government had "no confidence in its Magistrates." He (Sir Bartle Frere) must beg emphatically to deny the justice of the inference drawn by his Honorable and learned friend. The Government of India trusts its servants and has confidence in its Magistrates to the same extent and for the same good reasons that it always had. No doubt abuses did occur under that law of 1857. They must occur in any country where such a law might unfortunately require to be enforced. They would occur even if you had the agency of the London Police. Government did not wish to continue the severe provisions of the Act longer than was unavoidable, but in relinquishing those provisions Government was in no degree actuated by a distrust of its Magistracy.

The Honorable and learned gentleman had more than once adverted to the Bill of Rights, but he (Sir Bartle Frere) would venture to remind his learned friend, though he quoted from memory, that the Bill of Rights confined the right of having arms, to arms required for the subject's defence, and such as were "permitted by Law," and in this respect he could find nothing repugnant to the Bill of Rights in the present Act. That great Charter of our liberties also confined the right to subjects who were "Protestants." A limitation which he felt sure his Honorable friend would not wish to see imported into the present Bill. He would not follow his Honorable and learned friend into his sweeping condemnation of the administration of justice in this country. He (Sir Bartle Frere) could not agree that "the Courts were corrupt from the one end of India to the other." He could name some Courts where he was sure his Honorable friend would agree with him justice *was* administered in a manner to command universal respect. He need not enter into details, but he could not let such a sweeping condemnation pass without recording his dissent from it.

MR HARINGTON said, he had listened with some surprise and great regret to the speech which they had just heard from the Honorable and learned Judge on his right (Sir Mordaunt Wells), and he could not but

think that when the Honorable and learned Judge came to reflect upon that speech, he would feel that it was not calculated to promote that harmony and good feeling amongst all classes of Her Majesty's subjects in India, which were so essential to the welfare and prosperity of the country, and of all residing in it, and which was one of the objects contemplated by Her Majesty in the Gracious Proclamation which she had been pleased to issue on assuming the Government of the country; but that, on the contrary, such addresses could only keep up that feeling of antagonism between Europeans and Natives, which had already been attended with such mischievous consequences, and which the Government were very properly doing all in their power to allay. It was impossible for the Government of the country to be carried on if these party or class feelings were kept up. He (Mr. Harington) could not but think such speeches as the one they had just heard must have the effect of embarrassing the Government, and of adding greatly to its difficulties without doing any good, and it must be obvious to all that, at the present time, when they were on the point of introducing the important financial measures proposed by the Right Honorable gentleman opposite (Mr. Wilson), the success of which would depend so greatly upon the temper in which they were received by the people, it was highly inexpedient to cause irritation, and, above all, to set one class against another. The Honorable Member of Council on his left (Sir Bartle Frere) had answered much that had fallen from the Honorable and learned Judge, and he (Mr. Harington) would not occupy the time of the Council by going over the same ground. There were some points, however, in the Honorable and learned Judge's speech, which had not been touched upon by the Honorable Member of Council, but which he (Mr. Harington) thought called for notice. The Honorable and learned Judge had mentioned more than once that it had nowhere been stated that this was a Police, as well as a Political Bill—and the same remark, if he recollected rightly, had fallen from the Honorable and learned Vice-President. He (Mr. Harington) was surprised at the observation, because in the speech with which he (Mr. Harington) introduced the Bill, repeating what he had said on a former occasion, he distinctly stated that, although Act XXVIII of 1857, like some of the Special Acts passed about the same period, and which there could be no doubt grew out of the circumstances of the times, was also a temporary Act only, the Government for some time previously had had under its consideration the expediency of introducing a law for the purpose of disarming the population of the country, as calculated materially to repress crimes attended with violence, and generally to contribute to the maintenance of the public peace. He pointed out that in the Punjab a general disarmament of the population had been carried into effect with the best results, and that to this measure had been attributed, in no small degree, the remarkable tranquillity which prevailed throughout the Territory at the very time that the greater part of the North-Western Provinces was in a state of anarchy, and he observed that, although it was quite right and proper that most of the Special Acts passed in 1857 should not be allowed to remain in force a day longer than was necessary in reference to the circumstances which had called them into existence, Act XXVIII of 1857 was of a different character, and there were obvious and cogent reasons for its continuing on the Statute Book, and for its becoming one of the permanent laws of the country. He trusted he had said enough to satisfy the Honorable and learned Judge that the present Bill had not simply a political object, but that it also looked to police purposes. As they were informed was the the case in the Punjab and in other places which had been disarmed, he (Mr. Harington) felt confident that the Bill would prove most useful to the Magistrates in maintaining the peace of their districts, and that it would materially

check crimes of violence, such as murder, affrays, &c. The Honorable and learned Judge, at the time when he made the remark just referred to, informed them that he had carefully read all the debates which took place last year on the present Bill, but it was very clear that he had overlooked the passage, which he (Mr. Harington) had quoted from the speech with which the Bill had been introduced, or he would not have said that the Bill was a Political Bill only, and that no other character had ever been given to it. The Honorable and learned Judge stated that he (Mr. Harington) had assigned as a reason for not continuing in force some of the most important and stringent provisions of the present law, that the Magistracy could not be entrusted with the carrying out of those provisions. He begged most positively to deny that he had ever made any such assertion By the Magistracy he understood, not the native police, but the Magistrate, Joint-Magistrate, Deputy Magistrate, and Assistant Magistrate of a district. In those officers he had the fullest confidence. What he really said was that he had reason to believe that Section XXIV of the present Act, which was one of the Sections proposed to be omitted, had led to a great deal of oppression, and had proved in the hands of the native police, a powerful and fruitful means of bribery and corruption, if not of something worse, and that he was decidedly of opinion that the Section should not be retained as part of a Disarming Act, unless its enforcement could be entrusted to a much greater extent than was now the case to European Agency, which, looking to the great and pressing demand for Agency of that description at the present time in other Departments, was simply impossible. It was the native police he distrusted, not the Magistracy, as distinguished from the police.

The Honorable and learned Judge then went on to make a most sweeping charge against the whole of the Civil Courts of the country, which he declared to be universally corrupt. He had certainly excepted the Magistrates and Collectors.

SIR MORDAUNT WELLS interrupted the speaker, and said his remarks applied to the Judges also.

MR. HARINGTON resumed. He felt sure that the Honorable and learned Judge could not have intended the accusation to extend to the European Judges but there were the Native Judges. Would the Honorable and learned Judge name the Native Judges whom he believed to be corrupt. (Sir Mordaunt Wells again interrupted the speaker and said, it was most unfair to try and fix upon him that he had charged the Native Judges with bribery. There were Native Judges who were in every respect worthy of esteem and confidence). Mr. Harington said he was very glad to hear that the Honorable and learned Judge did not intend to accuse the Native Judges of being corrupt He had a very large experience in the Judicial Department in this country, and, although amongst the whole body of Native Judges he was not prepared to say there was not one who ought not to be there, he had no hesitation in bearing testimony to their general trustworthiness and fitness for their offices. He knew that they discharged their duties most creditably, and he believed that they possessed a large share of public confidence. But if the charge of bribery and corruption brought against the Civil Courts by the Honorable and learned Judge did not apply to the Judges of those Courts, to whom did it apply? If the Honorable and learned Judge had only the ministerial officers of the Courts in view when he made the accusation, he (Mr. Harington) was quite willing to allow that many of them did take money for doing acts for which they ought not to be paid, but which they performed more expeditiously if they received a small fee, or it might be called a bribe, which the suitors found it for their interest to pay. But was this practice confined to the Courts in this country. Did nothing of the same kind go on at home. Was not money often given at the Custom Houses in England to expedite the passing of baggage, which

the officers had no business to receive, but which people found it convenient to pay. The Honorable and learned Judge talked of the system being bad. He (Mr. Harington) would like to know what was meant by the system. Then the Honorable and learned Judge said that perjury and forgery abounded in the Courts in this country. He (Mr. Harington) admitted that such was the case, and he regretted the prevalence of these crimes as much as the Honorable and learned Judge, but they were the fault, not of the Courts, but of the people. It could not be denied that the people of India were an untruthful race, but though he could not speak from his own experience, he (Mr. Harington) believed that there was a good deal of perjury and forgery at home also. Something had been said about the Bill of Rights and of the right of Europeans to carry arms under that Bill, of which the present Bill would deprive them. But if he rightly understood the Bill of Rights, it gave no power to carry arms except for defence, and under the Bill of Rights no man could go out shooting. He had not the Bill before him, but he believed the words were, " Protestants have a right to carry arms to defend themselves, and as by law allowed." He believed the words in the Bill of Rights were to that effect. (Sir Mordaunt Wells intimated his assent.) But if the Bill before the Committee violated the rights of Europeans in respect to the carrying of arms, how came the Legislature, he would ask, to pass Section XLVII Act XIII of 1856, which contained a similar provision to that now objected to, and expressly gave power to every police officer in the Presidency Towns to take away the arms of any person, whether European or Native, who had not leave from the Commissioner of Police to carry arms, and did Section XXIV of the Bill before the Council, as now worded, propose to do more than this, except that it required the license of a Magistrate instead of the leave of the Commissioner. But the principle was the same. Did anybody ever suppose that the Bill of Rights or the rights of Englishmen were infringed by the Section of the Act just quoted, and yet directly the Council were asked to extend the same provision to the Mofussil as part of a general law intended for the whole country, they were told that they would be violating the Bill of Rights. The Honorable and learned Judge seemed to labor under a great misapprehension as to the circumstances under which the Sections now under consideration came before the Committee of the whole Council. The Honorable and learned Judge treated those Sections as if they formed part of a Bill introduced by him (Mr. Harington), whereas the Honorable and learned Judge ought to know that they were merely the recommendations of the Select Committee to which the Bill brought in by him (Mr. Harington) was referred for consideration and report. He need not tell the Committee that a Select Committee had no power to alter a single word of a Bill. When the Council resolved itself into a Committee of the whole Council upon a Bill, after it had been reported upon by the Select Committee, they took the Bill as read a second time and considered it with the amendments proposed by the Select Committee. If the Committee approved of those amendments they adopted them or any of them; if they disapproved of them they rejected them. If, therefore, the Honorable and learned Judge considered the proposed omission of the earlier Sections of the Bill improper, it was quite competent to him to move that they should continue to stand part of the Bill. Instead, however, of adopting that course, the Honorable and learned Judge had assented to the introduction of the Sections proposed by the Select Committee in lieu of the Sections which they recommended should be struck out until they came to Section XXIV, and then he suddenly turned round and said he preferred the original Bill, because he considered that Bill more effectual as regarded the Natives, and less obnoxious as regarded Europeans, overlooking apparently the fact that both Bills applied equally to Europeans and

Natives, and that there was nothing in the present Bill, in so far as Europeans were likely to be affected by it, which was not to be found in Act XXVIII of 1857.

He (Mr. Harington) was sorry to see that there was an impression abroad that the present Bill, or rather the alterations proposed by the Select Committee, had been conceived in a spirit of hostility to the European community, and what had fallen from the Honorable and learned Judge was well calculated to strengthen that belief. Nothing was further from the truth. The very contrary indeed was the fact. The Council, by passing a Disarming Act in 1857, which applied alike to Europeans and natives, affirmed the proposition that in any law of that nature no distinction should be made. It had become necessary to carry out the same principle in the Bill before the Council, and the great anxiety of the Select Committee was so to frame the law that, without sacrificing the object aimed at in its enactment, it should be as little vexatious as possible in its character, particularly as regarded Europeans. The Committee were quite willing to make some sacrifices, even though at the risk of rendering the Bill less efficacious as regarded the natives, if by so doing they could make the Bill more agreeable to the European portion of the community. This was the spirit in which the Section proposed for adoption by the Select Committee was framed, and he (Mr. Harington) thought that the remarks made by him, when he presented the Report of the Select Committee, clearly indicated this feeling on the part of that Committee. It was unusual to make any remarks on the occasion of presenting the Report of a Select Committee, and he had departed from the ordinary course in the present instance, as the alterations proposed by the Select Committee were numerous and important, and he thought that it would be convenient to Honorable Members if, before entering upon a consideration of the Bill, as proposed to be amended by the Select Committee, they were informed of the grounds upon which the proposed alterations were recommended. The Honorable and learned Judge looked upon the Section which they had settled, namely, Section XXIV, as particularly hostile to the European community, but was there any valid reason for his so regarding it? The Select Committee, no doubt, proposed a penalty which they thought would render the Section more effectual as regarded the Natives. It never occurred to him (Mr. Harington) that any respectable European could incur this penalty, because the good sense of Europeans, and the general wish of respectable persons of that class to support the Government in carrying out the law, would induce them to take out a license or obtain a dispensation, having secured which they might carry arms wherever they pleased, without fear of let or hindrance from any one; but directly he was informed that the European Community regarded the penalty as an objectionable feature in the Bill, he agreed to its omission, though he felt that he was rendering the Bill less effectual in consequence as regarded the Natives. The fee of one Rupee to be paid on taking out a license was too trifling a matter to be noticed. The penalty, then, having been struck out of the Section, it corresponded substantially with the corresponding Section of Act XXVIII of 1857, except that the word "license" was substituted for the word "certificate"; but in truth there was no difference between the two things. The Section, however, as it was now worded, differed very materially from the Section proposed by the Select Committee, in that, while the Select Committee would not have subjected Europeans to what they might consider the indignity of being disarmed by a native police officer, the Section which had been introduced on the recommendation of the Honorable and learned Judge, gave the power of disarming Europeans equally with Natives to every native police officer in addition to the functionaries proposed by the Select Committee. He (Mr. Harington) doubted whether the European Community would like the change, and whether they would not have preferred the original Section

even with the penalty. The Select Committee were not responsible for this alteration. In conclusion, he would only say that he could not agree to the invidious exemption proposed in favor of Europeans by the Honorable and learned Vice President, and he should therefore vote against the amendment.

THE CHAIRMAN said, he had a very few observations to make after the discussion which had taken place upon his amendment. If the Bill was intended as a State measure, it ought to contain a Clause enabling the Government to prevent persons from keeping arms If the Government did not think that necessary, then, as remarked by the Honorable Member for Bengal, this was an Arming and not a Disarming Act. Whereas the object of the Act of 1857 was to disarm, this Act would allow those who had been disarmed to regain possession of their arms. The Bill, as it now stood, only prevented persons from going abroad armed. If the Bill were intended to be useful as a State measure, there should be provisions to regulate the possession as well as the carrying of arms. As a Police Act it was unnecessary. He would recommend the passing of an Act, not extending to the whole of India, but giving power to the Executive Government to enforce its provisions in disaffected districts. As the Bill stood at present, unless a person had made a collection of arms, the Act would not apply to him, and each man might have his musket in his cottage. We did not know whether the Government considered that the Act of 1857 was not sufficiently stringent. The Honorable Member for the North-Western Provinces, when the question was put to him last Saturday, shook his head indeed; but was he (the Chairman) to infer from this, that Government approved of the provisions of the present Bill. If a proper disarming Bill were brought forward, he would be happy to support it. But if the Government wished for an Arming Bill, he entirely objected to it; nor did he see, in such a case, the necessity of suspending the Standing Orders, for the longer the delay the better would it be for the country. He thought that the object of Government in adjourning the debate, after the amendment of the 24th Section was carried, was to consider how the Bill might be turned again into a Disarming Bill. The Honorable Member on his right (Sir Bartle Frere) had spoken of the difference of making exemptions by proclamations and by Acts. For his part, if a distinction were considered invidious, he could not understand why such distinction should be made by a proclamation any more than an Act. If an exemption of Europeans would offend the Natives, those of Pegu should have been offended when the Act was extended there, and Europeans as a class were exempted. When the Act was extended to Shahabad, the Natives ought to have been again offended. We were bound to do our duty, careless of the offence it might unavoidably cause. We were not to pass laws abridging men's rights, unless a case was made out for depriving them of their rights, which had not been attempted here. Or were we to take away men's rights and to leave it to the Governor-General in his executive capacity to restore them? Ought not we, sitting here as Councillors of the Governor-General, to decide whether it was judicious or not to exempt Europeans. If good grounds were shown for their exclusion, why should not we do so at once—he should therefore press his amendment.

The terms of the mendment, as subsequently amended, were as follows:—

"Nothing in the provisions of the last two Sections shall extend to any European or Colonial British subject, or to any American or Eurasian."

MR WILSON said, that the discussion which had taken place belonged rather to the Bill as it was originally introduced than the Bill as now amended. We had preserved the clause in the Act of 1857, on which this discussion had taken place. His Honorable and learned friend (Sir Mordaunt Wells) had said that he would vote for the Bill so far as it continued the Act of 1857. That Act contained no exemption in favor of Europeans. So far, therefore, as that Act was con-

cerned, his Honorable and learned friend could not vote in favor of the Honorable and learned Chairman's amendment.

It appeared to him (Mr. Wilson) that the Honorable and learned Chairman's amendment was now no longer necessary. There was no necessity for a European under the Bill as amended to take out a license. Consequently, he could not be deprived of his arms unless the possession of them was considered by the authorities to be dangerous to the public peace. As he understood also, the Honorable and learned Chairman considered the present Bill not sufficiently stringent to meet the objects for which it was intended, and he had referred to the omission of the Section which empowered the Government to order domiciliary visits in search of arms. But was the Honorable and learned Chairman aware of the gross abuse of power that had been made by the native police under the Section he desired to retain? He had no idea of the amount of violence that had been caused by the enforcement of that Clause, nor of the exactions practised by the native Police. The Executive Government were prepared to accept the responsibility of the present measure, and from the short experience which he had had, he had heard enough of the abuse of power committed under the Clause, which abuse had rendered the Bill most unpopular. It must not be supposed, as the Honorable and learned Chairman had done, that the European officers of Government had no knowledge of these proceedings, for it was to those officers themselves that he was indebted for his information. These officers, who were responsible for the peace and good order in the North-Western Provinces, had told him that they could not entrust the power of searching for arms to their native subordinates, on account of the fearful oppressions practised by them. It was therefore considered necessary that, though the abandonment of such a Section would greatly lessen the powers of the Act, still it was thought advisable to make that sacrifice, and not to give the native police the power of exacting money from the people and having recourse to other modes of extortion. Those domiciliary visits were fraught with the greatest mischief. In some cases the dwellings of loyal people had been invaded and ransacked. Therefore how far preferable was it to remove this power, though it be at a small sacrifice; he would contend for the withdrawal of that power unchecked. Now that order had been comparatively restored, he should not recommend any such power to be given to the Police, except on the condition that it should be exercised in the presence of European officers and then he would not object to it. Then, as to the two Clauses they were proposed to exempt Europeans from, he did not see that there was anything objectionable in them. The Bill authorized a duly qualified Magistrate to grant licenses, besides which there was no prohibition to carry arms. The Magistrates could safely be entrusted with such powers, though not the native police. They were accountable for the use the police made of the power. For his own part he did not think any absolute necessity existed to compel people to take out licenses. He thought however that there was some force in the arguments put forward that, now that the license was taken away, this had become rather an Arming than a Disarming Act. He did not agree with the Honorable and learned Chairman in thinking that the Bill did not empower the authorities to disarm any person they thought was carrying fire-arms likely to be dangerous to the public peace. This was provided for by Section XXXI. Although he did not think it necessary to confer the Native Magistrates with the power of disarming Europeans, he did not think that the European Magistrates would abuse such a power. He proposed therefore the introduction of a Clause, empowering the local Governments to order a search for arms in special cases, such as a large importation of weapons into certain districts, and the like.

MR. SCONCE said that, as the remarks by which, in a late debate, he had called the attention of the Council to the effect of the amendment of Section XXIV of the Bill had been referred

to in the course of the present discussion, it seemed proper that he should say he still adhered to the construction which he had before put upon the amended Section. The result would be clearly to permit the people in general to carry arms, only any person not having a license might be summarily disarmed, if it was dangerous to the public peace that he should go armed. Now he was not prepared to say that such a provision was a fitting substitute for the law about to expire this day. Up to this moment, under the operation of Act XXVIII of 1857, all the people in the North-Western Provinces might be and were being disarmed, and certainly it seemed to be incongruous to go immediately upon a contrary principle, and to permit all the people to carry arms. But this was not what his Honorable friend opposite (Mr. Harington) and himself had recommended. They had proposed in the Bill which was before the Council to permit no person to carry arms without a license. He was not sure that even that was sufficient. He thought that, in the Districts in which the disarming had been carried out, it might be desirable to license the possession of arms. But he was averse to continuing a law for generally disarming the country. The Executive Government, we had heard from the Honorable gentleman (Sir Bartle Frere), considered the power of ordering domiciliary visits to be unnecessary, and he could not agree to its continuance. He himself, as the Council knew, on the first discussion of this Bill proposed to omit the last part of Section XXIV, which permitted a Magistrate summarily to disarm a person carrying arms. He proposed to enforce the law by penalties. With regard to the amendment of the Honorable and learned Chairman, supposing the amended Section XXIV to stand, if the Council adopted the amendment of the Honorable and learned Chairman, the effect of it would be that, although a European might be considered dangerous to the public peace, he would still be allowed to go armed. If he heard rightly, the Honorable and learned Chairman himself admitted that, by the ordinary law, any person, even a European, carrying arms, might be disarmed, if necessary for the public safety; virtually therefore Section XXIV, as it now stood, went no further than the ordinary law. For these reasons he should oppose the amendment.

SIR MORDAUNT WELLS thought that the introduction of such a provision as that proposed by his Right Honorble friend would make this Act precisely the same as that of 1857, with the exception of the provision to make this Act perpetual. He would not fight for a shadow, and as he believed that the Act was now practically innocuous as regards Europeans, he would not have the Act perpetual; it should be precisely similar to the former Act, with respect to the working of which he had heard no complaints. He concluded by offering his acknowledgments to the Right Honorable gentleman for having, like a skilful pilot, enabled them to steer clear out of the difficulty.

MR HARINGTON said, the Honorable and learned Judge had again referred to the amendments proposed by the Select Committee as the Bill brought in by the Honorable Member for the North-Western Provinces, alluding to him (Mr. Harington). Now he must say that it was not fair in the Honorable and learned Judge thus to continue to characterise those amendments. The Bill, which he (Mr. Harington) brought in, proposed to make perpetual Act XXVIII of 1857 without any modifications, and the Honorable and learned Judge had again and again intimated his willingness to accept that Act as it stood, though it was of general application, and contained no exemption in favor of Europeans. No doubt, as a Member of the Select Committee, which originally consisted not only of himself and the Honorable Member for Bengal, but also of the Honorable Member for Bombay, and the Honorable and learned Judge's predecessor in this Council (Sir Charles Jackson), he (Mr. Harington) had taken an active part in preparing the amendments suggested by the Select Committee in the original Bill. Equally

with the Honorable Member for Bengal, he was responsible for proposing those amendments, and he willingly admitted his responsibility, but still it must be remembered that, after all, they were only proposed alterations, and that it rested with the Committee of the whole Council to adopt them or not, according as they thought proper. He had already explained more than once the grounds on which the Select Committee had proposed so extensively to alter the original Bill. When that Bill was introduced by him, he was quite satisfied with Act No. XXVIII of 1857 as it now stood, but after what he had heard from the Right Honorable Gentleman opposite on his return from the Upper Provinces, and others as to the manner in which the Act had been carried into effect, he felt that, unless European Agency could be more extensively employed in its enforcement than had hitherto been the case, it would be better to give up the part of the Act which allowed of a general search for arms, and to endeavor to effect the objects contemplated in the Act by prohibiting the general carrying of arms without a license from a Magistrate. The Honorable and learned Judge had just repeated what he had said in his first speech to-day as to the character of the present Bill, namely, that it was not a Police Bill, but entirely a Political Bill. To show that the Honorable and learned Judge was not right in giving this description of the Bill, he (Mr. Harington) would again remind the Council of what he said, when, in the month of August last, he brought in his first Bill to render Act XXVIII of 1857 perpetual. He then admitted that the events of 1857 had, no doubt, hastened the introduction of the Act, and accelerated its passage through the Council; but he went on to say that the disarming of the population, with a view to the maintenance of the public peace and to the prevention of crimes of the more violent class, particularly affrays, which, in this country, from the number of persons who engaged in them, and from the fierceness of the combatants, so often assumed the character of pitched battles, had for many years previously been under the consideration of the Government, and had been strongly advocated by many old and experienced officers. The Bill was of a two-fold character. He did not think that the Government had any thing to fear in a political point of view from the people carrying matchlocks, swords, and spears. A few European soldiers would disperse a whole district armed only with the weapons just mentioned, and therefore the Sections which related to the carrying of arms without a license might properly be regarded as Police Sections. The other Sections which related to the manufacture of cannon, mortars, howitzers, or to the possession of arms of that description, and to the importation of sulphur and arms and ammunition generally, and the transport of the same from one part of the country to another, must be regarded as having chiefly a political object. It was under these last Sections that the importation of arms into the North-Western Provinces, to which the Honorable and learned Judge had alluded, would be regulated or prevented altogether, if considered dangerous.

With regard to what had fallen from the Honorable and learned Vice-President, as to his (Mr. Harington) having shaken his head when the Honorable and learned Vice-President asked whether the amendments recommended by the Select Committee in the original Bill had been proposed with the sanction of or had been approved by the Executive Government, he begged to observe that the Honorable and learned Vice-President must be aware that the Select Committee could have no power to consult the Executive Government. Their duty was to consider the Bill as made over to them by the Council after being read a second time, together with any reports or petitions presented to the Council and referred to the Select Committee for consideration, and to suggest such alterations in the Bill as they might deem proper, or if they considered no changes necessary, to make a report to that effect. This he understood to be the duty of the Select Committee

under the Standing Orders. Individually, of course, any Member of the Select Committee might discuss the Bill with any Member of the Legislative Council not a Member of the Select Committee, whether he was a Member of the Executive Government or not, or with any other person. But the Select Committee were required to carry on their duty of revising and reporting on a Bill apart from the Executive Government. He quite agreed with the Honorable and learned Vice-President and the Right Honorable gentleman opposite, that, whatever amount of oppression might have been committed in carrying out the provisions of Act XXVIII of 1857, the Legislature of that year were not chargeable with any portion thereof. They were not to blame for passing that Act because in practice some of its provisions had been abused, but if the Honorable and learned Vice-President and the Honorable and learned Judge were right in claiming exemption in favor of Europeans from the present Bill, then he would say that the difficulty of granting such exemption had been immensely increased by the conduct of the Legislature of 1857 in not introducing such exemption into the Act passed in that year, and on the supposition above mentioned, it seemed to him (Mr. Harington) great blame attached to them for not having done so. Had the exception in favor of Europeans now claimed been made in the Act of 1857 who, he would ask, would have ventured to include them in the present Bill. But no such exception having been made when Act XXVIII of 1857 was before the Council, he must repeat he did not see how it could be properly or consistently allowed now.

The question being about to be put from the Chair—

SIR MORDAUNT WELLS asked if the Bill was to be a permanent or a temporary measure? If permanent, he would vote for the Honorable and learned Chairman's amendment; but if temporary, he would vote against it.

MR. WILSON said that Government were of opinion that nothing but harm could come of a renewal of the discussion of this question, but they would not ask for a perpetual Act. The precise number of years for its continuance might be considered afterwards.

THE CHAIRMAN'S Motion being then put, the Council divided as follows:—

Aye 1.	*Noes* 7.
The Chairman.	Mr. Sconce.
	Sir M. Wells.
	Mr. Forbes.
	Mr. Harington.
	Mr. Wilson.
	Sir Bartle Frere.
	Sir James Outram.

So the Motion was negatived, and the Section, as before amended, was then passed.

Section XXVII was passed after a verbal amendment.

Section XXVIII related to the form of license.

MR. FORBES doubted the necessity of the concluding words of the Section, which restricted the duration of a license to one year, unless a shorter period was specified in the license, with reference to the power of revocation conferred by the preceding Section.

After some discussion the Council divided:—

Ayes. 5	*Noes* 2
Sir Mordaunt Wells.	Mr. Harington.
Mr. Sconce.	The Chairman.
Mr. Forbes.	
Mr. Wilson.	
Sir Bartle Frere.	

So the Motion was carried.

The question being then put that the Section as amended stand part of the Bill, the Council divided:—

Ayes 6.	*No.* 1.
Sir Mordaunt Wells.	The Chairman.
Mr. Sconce.	
Mr. Forbes.	
Mr. Harington.	
Mr. Wilson.	
Sir Bartle Frere.	

So the Section was carried.

Section XXIX was passed as it stood.

Section XXX, relating to the fee for license, was omitted on the motion of Sir Mordaunt Wells.

Section XXXI was passed after amendments.

After some discussion as to the advisability of adding a Clause to the Bill to enable the Government to disarm in certain proclaimed Districts—

THE CHAIRMAN suggested that as it was impossible to pass the Bill this evening, and as Act XXVIII of 1857 expired to-day, it would be better to pass a temporary Act for one month, and to postpone the consideration of this Bill.

MR. HARINGTON having assented to the course, the consideration of the Bill was accordingly postponed, and the Council resumed its sitting.

MR. HARINGTON then moved that the Standing Orders be suspended to enable him to introduce and pass through its several stages a Bill "to continue in force Act XXVIII of 1857."

SIR BARTLE FRERE seconded the Motion, which was put and carried.

MR. HARINGTON accordingly moved that the Bill be read a first time.

The Bill was read a first time.

MR. HARINGTON moved that the Bill be read a second time.

The Motion was carried and the Bill read a second time.

MR. HARINGTON moved that the Council resolve itself to a Committee on the Bill.

Agreed to.

The Bill passed though Committee without amendment, and the Council having resumed its sitting, was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried and the Bill read a third time.

MR. HARINGTON then moved that Sir Bartle Frere be requested to take the above Bill to the Governor-General for his assent.

Agreed to.

MILITARY POLICE BATTALIONS.

MR. SCONCE moved that Sir Bartle Frere be added to the Select Committee on the Bill "to provide for the good order and discipline of the Battalions of Military Police."

Agreed to.

KOONCH AND CALPEE.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "to remove the Pergunnahs of Koonch and Calpee, in Zillah Jaloun, from the operation of the General Regulations" to the Governor-General for his assent.

Agreed to.

POSTPONED ORDERS.

The following Orders of the Day were postponed:—

Adjourned Committee of the whole Council on the Bill "for imposing Duties on profits arising from Property, Professions, Trades, and Offices."

Committee of the whole Council on the Bill "for the licensing of Arts, Trades, and Professions."

Committee of the whole Council on the Bill "relating to the Transportation of Convicts."

The Council adjourned at 6 o'clock on the motion of Sir Bartle Frere, till Monday, the 2nd July, at 7 o'clock in the morning.

Monday Morning, July 2, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq., and
H. B. Harington, Esq.,	Hon'ble Sir M. L. Wells.

ARMS AND AMMUNITION.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor General had assented to the Bill "to continue in force Act XXVIII of 1857."

INCOME TAX.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for imposing Duties on profits arising from Property, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill.

Section CCXXI provided as follows:—

"No person who shall have been served with a notice as aforesaid shall be liable to the penalties before mentioned, for not delivering any return or declaration required by any notice as aforesaid, if it shall appear to the Collector or Commissioners, on enquiry before them, that such person is entitled to be exempted from the payment of all and every the Duties hereby granted."

THE CHAIRMAN moved the omission of the above Section and the substitution of the following:—

"No person who shall not have been served in the manner directed by Section XXVII of this Act with the notice provided by that Section, shall be liable to the penalties before mentioned for not delivering a return or declaration of his profits or income."

Section CCXXII was passed as it stood.

Sections CCXXIII and CCXXIV were amalgamated and then passed.

Section CCXXV was passed as it stood.

THE CHAIRMAN moved the introduction of the following Section after Section CCXXV:—

"Nothing in this Act contained shall prevent any person being punished for any offence in any manner otherwise provided by law. Provided that, if any proceedings be taken under this Act for the punishment of any person for an offence, a conviction or acquittal shall be a bar to any other proceedings for the same offence."

Agreed to.

Section CCXXVI provided as follows:—

"Any person, not being a European British subject, who shall be guilty of any offence, for which, according to the provisions of this Act, he shall be liable to a forfeiture or fine only, shall be punishable for such offence, except in the Presidency Towns and the Straits' Settlement, by any Magistrate or person lawfully exercising the powers of a Magistrate, whether the offence shall have been committed within the local limits of the jurisdiction of such Officer or not."

THE CHAIRMAN moved the substitution of the words "whether a European British subject or not" for the words "not being a European British subject."

Agreed to.

THE CHAIRMAN moved the addition of the following words:—

"or if the offence shall be committed by a European British subject, or shall be committed in the Presidency Towns or Straits' Settlement, he shall be tried by a Police Magistrate."

The Motion was carried, and the Section as amended then passed.

Section CCXXVII to CCXXXVI were passed as they stood.

Section CCXXXVII provided as follows:—

"All forfeitures or penalties not exceeding 200 Rupees, imposed by this Act, exclusive of any increased Duties chargeable under this Act, may be recovered before the Collector or before two or more Commissioners in and for the place wherein the offence shall have been committed, or the offender shall have been assessed; and also such of the penalties exceeding 200 Rupees as consist of any increased Duties, or of any sums which are hereby directed to be added to the assessment of the Duties, shall be so recoverable."

THE CHAIRMAN moved the omission of all the words after the words "shall have been assessed."

The Motion was carried and the Section as amended then passed.

Section CCXXXVIII provided as follows:—

"The Collector or Commissioners shall take cognizance of any offence of which he or they shall have cognizance under the last Section, upon information or complaint in writing made to them, and upon a summons to the party accused to appear before the Collector or Commissioners at such time and place as they shall fix, or without such summons, in case the party shall have been charged before the Collector or Commissioners upon any appeal, objection, or surcharge as aforesaid, with increased Duties in respect of the matter complained of, and shall have appeared upon such objection or surcharge before the Collector or Commissioners,

THE CHAIRMAN said, he was not sure whether this Section was quite right. The Collector or Commissioners should have power in all cases of offences committed in his or their presence. He should therefore move the omission of all the words after the word "case," and substitution of the words "the person shall be guilty of the offence in their presence."

The Motion was carried, and the Section as amended then passed.

Section CCXXXIX was passed as it stood.

Section CCXL was passed after a verbal amendment.

Section CCXLI was passed as it stood.

Sections CCXLII and CCXLIII were severally passed after an amendment.

Section CCXLIV was passed as it stood.

Section CCXLV was passed after a verbal amendment.

Sections CCXLVI and CCXLVII were passed as they stood.

Section CCXLVIII provided as follows :—

"It shall be lawful for the Governor-General of India in Council to postpone for such period as he shall deem necessary the period for this Act to come into operation in any part of India."

THE CHAIRMAN said, he thought it necessary to call the attention of the Council to this Section. He thought it right that the Governor-General should have the power to postpone the operation of this Act in any part of India where it might be necessary to do so. But it appeared to him that some misapprehension existed as to the power of the Executive Government to enact laws and enforce them in what were called the Non-Regulation Provinces. In the Punjab and Oude it appeared that taxes under various names had been raised, and were, during the present year, being levied under the authority of the Governor-General. Now it appeared to him that no law could be passed except by this Council. Under the Charter Act of 1833, 3 and 4 Wm. IV c. 85, the power to make laws and regulations was vested solely in the Governor-General in Council, and all laws and regulations were to be made at some meeting of the Council, at which the said Governor-General and at least three of the Ordinary Members of Council should be present. By the subsequent Act 16 and 17 Vic. c. 95, however, the constitution of the Legislative Council had been enlarged by the addition of six Members, two of them b ing Judges of Her Majesty's Supreme Court in Calcutta; and the Governor-General could pass no law except at a meeting of this Council, at which the Governor-General or Vice-President, or some Ordinary Member of Council, and six or more Members of the Council should be assembled, a Judge of Her Majesty's Supreme Court or the fourth Ordinary Member of Council being one. The Governor-General therefore could pass no law except in this Council, nor could the power of passing laws be vested in him by this Council when he might be absent from his Council. It seemed impossible to conceive, therefore, how the Chief Commissioner of Oude or the Lieutenant-Governor of the Punjab could pass any law, or impose any tax, either with or without the assent of the Governor-General, any more than the Governor of Madras or Bombay could do. He was equally at a loss to comprehend how the Chief Commissioner in Oude could adopt and enforce within that Province a measure for taxing the people in a lump sum. The Lieutenant-Governor of the Punjab was also levying a similar tax, and at Simla there was what was called a Town Duty, the collection of which was made over to a native contractor. It was said that these measures were based to a great extent upon the Bill brought in by the Honorable Member for the North-Western Provinces, for licensing Trades and Professions, which had been rejected by the Council. Be this, however, as it might, he (the Chairman) must say that the Lieutenant-Governor of the Punjab and the Chief Commissioner of Oude had not the power to pass any such laws, and he wished now to put a stop

to all taxes which had been levied without the force of law. He had no official information, but he had seen it stated in the newspapers that there was great oppression exercised towards the people of Oude in the collection of this tax; and rather than allow those oppressions to be continued, when this law came into force, he would exempt the people of Oude from its operation during the current year for which they had been assessed, and for which they had already made payments. It had been asserted, but wrongly, he thought, that the Non-Regulation Provinces might be legislated for by the Governor-General. But what was a Non-Regulation Province? The term simply meant a Province to which the general Regulations passed before this Council had any existence did not extend. The Governments of Bombay and Madras, when they had the power of legislation, had not extended the Regulations which they then passed to many parts of the Presidencies under their government. They were equally Non-Regulation Provinces. These Governments therefore had as much power to legislate for those Provinces as the Governor-General in his Executive Council, or the Governor-General alone, when absent from his Council. He (the Chairman) thought it right to call the attention of the Council to this matter, as he believed there was a great deal of misapprehension as to the powers of the local Governments in the Non-Regulation Provinces. They seemed to think that they might act on their own sense of justice independently of any laws passed by the Legislative Council, or that they might act on the spirit of laws disregarding the letter. But this was not the case. Non-Regulation Provinces, unless especially excepted in the Act, were as much bound by a general Act of the Council as Regulation Provinces. But the whole of India was subject to the Charter Act of 1833. The Governor-General in Council, before the Act of 1853, had the power to pass laws provided three Members of Council were present, and in such a Council the Governor-General might repeal, amend, or alter any laws or Regulations. By the law, as it now stood, this Council and this Council alone could pass laws. If the Local Governments of the Punjab and Oude, either with or without the sanction of the Governor-General, had thought proper to impose duties or taxes, he thought that they ought not to be continued, and that they ought to be superseded by this Act. As the new taxes, however, had been actually levied, he was quite willing to indemnify the Officers who had assisted in carrying out the orders of the local Government for whatever had been done under a mistake. He only wished it to be understood that they could not do so for the future. He would therefore move the addition of the following words to the Section:—

"But no other Tax or Duty shall, during such period, be leviable in that part of India, except such as could be lawfully levied in addition to the Duties provided by this Act."

MR. WILSON said, he had no objection whatever to offer to the exposition of the law which the Honorable and learned Chairman had laid down. He would only ask him to allow his amendment to be so worded as to apply to the existing circumstances of the case, that is, to make an exception in favor of assessments during the current year, so that the arrangements which had been made in pursuance of the supposed power, which we need not discuss now, should be maintained. With that limitation he had no objection to the amendment.

THE CHAIRMAN said, he was quite willing to make an exception in favor of the taxes already paid. But as, from the information which he had received, it appeared that great oppression was exercised in the levy in a lump sum of the tax in Oude, he would not have them liable to a continuance of that oppression. It was true that the Government would lose some revenue; but better that it should do so, than that the people should be subjected to any oppression.

MR. WILSON said, that, so far from its being true that any oppression had taken place, he could assure

his Honorable and learned friend that there was no ground for the reports published in the public prints. A recent case alluded to by one of the papers was particularly enquired into and found to be without any foundation whatever. The Government received frequent reports from Oude, which were very satisfactory. The manner in which the assessments were made was to assess a lump sum on villages and districts, and to leave the people to divide the assessments among themselves, either by punchayet or in whatever other manner they pleased.

MR. SCONCE said, he was not partial to the system of assessment by punchayets, for then the weak invariably had to pay the most. It seemed to him that the term "lump assessment," as used in enforcing the Income Tax in Oude, was wholly a misnomer. It was not assessing in a proper ratio, but some he feared paid a small sum whose means were large, and others a high figure whose means were small. He knew of the proceedings taken in Oude only from the published despatch of the Chief Commissioner, and in so far as he remembered, the *modus operandi* was this. First of all a list was procured of the inhabitants of each village, and the incomes of all the inhabitants were estimated. When the incomes of individuals were thus ascertained, a total was struck, and this was called a "lump assessment," to be re-distributed over the people. Now, in the first place, this term was a misnomer, as it was founded upon a detailed estimate of the incomes of the people; and it was also a misnomer, if the total estimate were redistributed according to the actual incomes of the people. In that case a double process of assessment would be uselessly gone through. But what he feared was that, in distributing a "lump assessment," as the term was, the incomes of the people would be arbitrarily estimated, and that while, according to this mode of assessment the tax would fall on some at the rate of one or two per cent., it might amount to five or six per cent upon others, according as the parties concerned in the distribution should favor themselves and friends, and lay the burden on other people. Certainly, in assenting to the agency of a punchayet as part of the present Bill, he did not assent to the introduction of the lump assessment system, as it seemed to be employed in Oude. He thought it important to notice also that the mode in which the Income Tax was imposed differed in other respects much from the provisions of the present Bill. Here the minimum of assessment was an income of two hundred Rupees: but in Oude the distribution of the lump assessment appeared to go much lower. In Oude the rule was that every one who could pay a Rupee a year should be taxed: and as the tax was supposed to amount to three per cent. on income, obviously a tax of one Rupee would be levied on an income of thirty-three Rupees.

SIR BARTLE FRERE said that the subject to which the Honorable and learned Chairman had drawn attention was one of great difficulty and importance. He might remind the Council that one of the theories held on the subject was that all powers of the Government we had superseded were vested in the representative of the British Government. For his own part, when in charge of a Non-Regulation province, he (Sir Bartle Frere) had always considered that he was bound to give effect to the laws passed by that Council, as far as the machinery at his disposal allowed. Where the machinery did not exist this was of course impossible. He instanced the case of appeals in a Civil Court. If a law provided for appeals from a Moonsiff to a Judge, from a Judge to the Sudder Adawlut, and neither Moonsiff, Judge, nor Sudder existed, it was of course impossible to follow the law literally. All you could do was to be guided, as far as possible, by its spirit.

SIR MORDAUNT WELLS said, he concurred entirely in the exposition of the law laid down by his Honorable and learned friend in the Chair with regard to the mode of assessment adopted in Oude. He apprehended that an

assessment in a lump was not an Income Tax. If you lumped the assessment and afterwards distributed it among the people, it could no longer be considered an Income Tax. If therefore any such rules had been put in force in Oude, it was quite clear that, under the words proposed to be introduced by his Honorable and learned friend, there would be no power to the Executive Government to continue them. Certainly no such power was given by the Act.

MR. FORBES said, it was optional with every person to be assessed by a punchayet or not according to their own wish. Section CIII provided that, if any person objected to be assessed by punchayet, he should be assessed by the Collector or other Officer specially appointed, as if no order for assessment by punchayet had been made, and he (Mr. Forbes), did not therefore share in the objections against the punchayet system as introduced into this Bill, which were felt and had been stated by the Honorable Member for Bengal.

MR. HARINGTON said, he did not propose at the present time to enter into any discussion as to the powers which could be exercised by punchayets under the provisions of the Sections relating to assessment by punchayet as settled by the Committee. If any Honorable Member considered that those Sections did not go far enough, or that they went too far, or that they were not sufficiently specific, it was open to him to ask the permission of the Committee to go back to the part of the Bill in which the Sections in question were contained, and to propose any amendment thereof which he might deem necessary or proper. But he (Mr. Harington) wished to correct a misapprehension into which the Honorable and learned Vice-President had fallen in supposing that the Lieutenant-Governor of the Punjab and the Chief Commissioner in Oude had introduced modes of taxation into the Territories subject to their authority after the Council had voted against their adoption. Such was not really the case. The Honorable and learned Vice-President alluded to the Bill for licensing Trades and Professions, which was brought in by him (Mr. Harington) in the course of last year. So far from the Council having rejected that Bill, he begged to remind the Honorable and learned Vice-President that, with some modification, it was read a second time by a unanimous vote of the Council. No doubt, the Bill, as introduced, met with considerable opposition, and the principle of it was much discussed, but still the Bill was read a second time and it was not, until the Bill had passed through that stage and been published in the usual course, that the Lieutenant-Governor of the Punjab and the Chief Commissioner in Oude introduced the measures of taxation to which the Honorable and learned Vice-President now objected. The Lieutenant Governor of the Punjab and the Chief Commissioner in Oude might not have had the authority of law for what they did, but he (Mr. Harington) did not wish it to go forth, that those Officers had acted in direct opposition to a vote of the Council, when the fact was that it was not until the Bill for licensing Trades and Professions brought in by him had obtained a second reading, as already noticed, whereby the principle of the Bill was affirmed, that they introduced their measures of taxa ion, which were based to a great extent upon his (Mr. Harington's) Bill. He thought it only fair to the Lieutenant-Governor of the Punjab and the Chief Commissioner in Oude that he should make this statement.

He (Mr. Harington) considered that this Council and the public were greatly indebted to the Honorable and learned Vice-President for what had justly been called his very clear exposition of the law as regarded the power of legislating for what were called the Non-Regulation Provinces. There could be no doubt that very great misapprehension prevailed upon the subject. It was supposed by many that in the Non-Regulation Provinces the chief civil authority could make any laws he pleased. What had just fallen from the Honorable and learned Vice-President showed that this was

a mistake. Frequent complaints had been made against the Government for not placing the North-Western Provinces under the Non-Regulation system. His name had been mixed up with those complaints. Very recently a complaint of this nature had appeared in a paper enjoying a very large circulation. Now what did the Council suppose was the origin of the complaint? Why, the dearness of grain in a particular district, and the inability of the ruling power under the Regulations to make it cheaper; whereas it was contended by those who made the complaint that, had the district been Non-Regulation, instead of subject to the Regulations, the local authorities could have interfered and compelled the grain merchants to sell at what might be deemed a reasonable price. He (Mr. Harington) very much doubted whether the Right Honorable Gentleman opposite would concur in these views.

THE CHAIRMAN said that the Bill brought in by the Honorable Member for the North-Western Provinces, who was at that time a Member of Government, was not read a third time, nor did it receive the Governor-General's assent and become law. He thought it proper to make this observation, because he thought it ought to be understood that no local Government had a right to make any law or to act upon a law introduced into this Council, whether it was read a second time or not, before it was read a third time and passed and had received the Governor-General's assent. Under the explanation given by the Member of the Executive Government that in reality no oppression had taken place, he would not object to the proposition of the Right Honorable Gentleman; something must also be done to indemnify the Officers of Government who had, he had no doubt, acted in good faith, although in an erroneous assumption of power. With this view he would suggest that the Clerk of the Council be requested to draw up an indemnity Clause to be inserted in this Bill.

THE CHAIRMAN'S Motion was then put and carried, and the Section as amended passed.

Sections CCXLIX and CCL were passed as they stood.

Section CCLI was passed after a verbal amendment in Clause 7.

Section CCLII was passed after amendments.

The further consideration of the Bill was postponed, and the Council resumed its sitting.

The Council adjourned at 10 o'clock, on the Motion of Sir Bartle Frere, till to-morrow, at 7 o'clock in the morning.

Tuesday Morning, July 3, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq., and
H. B. Harington, Esq.,	Hon'ble Sir M. L. Wells.

LICENSING OF TRADES AND PROFESSIONS.

MR. WILSON moved that the Council resolve itself into a Committee on the Bill "for the Licensing of Arts, Trades, and Professions," and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Section I was passed after verbal amendments.

Section II provided as follows:—

"From and after the said day of every person who shall carry on any lawful Art, Trade, or Profession as hereinafter described shall be required to take out such License as is in Schedule A to this Act annexed directed, namely:—

"Every person who shall carry on any Art or Trade, having for its object the procurement of gain to such person:

"Every Company or Association or body of persons who shall carry on any Art or Trade as aforesaid, whether constituted a Company by Act of Parliament, Royal Charter, Letters Patent, or Act of the Legislative Council of

India; or constituted or regulated by deed of settlement or other instrument:

"Every partnership of persons who shall carry on any Art or Trade for the procurement of gain to such partnership:

"Every practising Barrister, Attorney, Vakeel, and Mookhtear; every Member of any College of Physicians or College of Surgeons; and every Medical Graduate of any University or College, not being in Her Majesty's Army or in Her Majesty's Indian Army; every Architect; every Civil Engineer."

MR. SCONCE said, he had strong doubts as to this Bill, both as regarded the time and manner in which it was proposed to the Council to adopt it. He had no objection to accept a system of specific licenses, such as licenses for dealing in tobacco and other employments that might be mentioned; but as the Bill now stood, it was far from being so. Looking to the classes of persons proposed to be licensed by this Bill, and the scale of rates chargeable, and connecting the Bill with the terms of the other Bill which had not yet been passed, he desired to take the sense of the Council on the system advocated by the majority of the Select Committee. His first objection to the Bill was that it was useless. We had just been considering and had almost passed the Income Tax Bill, which presented the amplest and most satisfactory data for levying a tax on every man according to his means. If you were satisfied that the machinery of that Bill was quite adequate for the purpose, it seemed to him that the adoption of any arbitrary, indeterminate, and unnecessary scheme of this kind was altogether unworthy of the Council. It would amount, in fact, to a double Income Tax. By the Bill that they had been lately considering, they would tax incomes down to 200 rupees a year. They had spared no pains to perfect their machinery for that purpose, and he for one believed that a tax of 2 per cent. on smaller incomes and 3 per cent. on higher was the utmost they should exact. But at any rate, having perfected their measure, were they to abandon the means of taxation which it afforded, and devise another scheme to bring in more money?

We ought in the present state of things to have the utmost assurance that we were not going to tax the people more than they could bear, and no adequate justification, he thought, had been offered for adopting this additional project of taxation. He had said that this Bill would be imposing a double Income Tax. His meaning was that, if they levied four or ten Rupees a year from parties whose income amounted to two, four, or five hundred rupees a year, such license duties would be equivalent to an additional tax upon income of two or even five per cent. There appeared to be no distinction made between a Bank in this city and a Native mahajun. The latter perhaps earned two hundred Rupees a year, and to take ten Rupees from that man was most unreasonable, while the former might earn many thousand Rupees a year, and would be charged the same amount. So was it the case with many others. The measure seemed to him impracticable in itself and was drawn without any adequate check to secure the fair administration of it. He must certainly deprecate and repudiate such a system, which would be a source of very great hardship to the poorer classes. It presented the most unsatisfactory data for levying such a tax, while in the Income Tax Bill we had, it must be presumed, the most legitimate standard of assessment. If by the Income Tax Bill we did not raise sufficient revenue, the alternative was manifest; we might raise the rates, we might take 2¼ or 2½, 3¼ or 3½ per cent., and he thought no one could hesitate between that modification of the Income Tax Bill and the arbitrary and injurious assessments of the Bill now under discussion. He would not harass the people with two Bills, if one could be made to suffice. He would ask the Council to consider what the title of the Bill was. It was a Bill for the Licensing of Arts, Trades, and Professions. The object seemed to be to bring within its scope artizans, small dealers or traders of every class and whole-sale traders, and small and large manufacturers. There were various descriptions of people of very various

circumstances. Then as to the members of a profession, the names of the first four were Barristers, Attorneys, Vakeels, and Mookhtcars, who were required to pay ten Rupees a year. Now a Barrister had to pay ten Rupees, and a Vakeel had also to pay ten Rupees. No difference was made between a Vakeel in a Sudder Court and a Vakeel in a Moonsiff's Court. But he should say, if there was no difference in the title, there was a material difference in their incomes; for instance, a Vakeel in the Sudder Court made some thousands a year, while the Pleader in a Moonsiff's Court earned, it might be, not more than five Rupees a month. It was the purpose of this Bill to take the same tax from Her Majesty's Law Officers in the Supreme Court as from the humblest Pleader in a Moonsiff's Court. He was merely pointing out the imperfections of the Bill. Then there was a distinction between a Vakeel and a Mookhtear—a Vakeel was a professional man, whose legal status was laid down by local law; whereas a Mookhtear was an agent, and there were not only such men habitually attached to the Courts, but the personal agents of zemindars were Mookhtears, and they also, men merely distinguished by holding a power of attorney, would also have to pay ten Rupees a year. The mere possession of a power of Attorney would render a man liable to be classed as a member of a profession. It was impossible to expect such people to pay. Then, as to an Architect, he was a Member of a profession. There were few Architects, according to the real acceptation of the term, in Calcutta, where there would be no difficulty about them. But if we went beyond the Presidency, it would be hard to say whom they should call an Architect, unless it was a *rajmistry* or house builder. As he had already said, he had no doubt that they would be able to put it in force in the Presidency Towns, but in the Mofussil some difficulty would be experienced as to the classification as to who was a Mason and who an Architect; besides which, it would be very hard to make such men pay ten Rupees a year. Then as to the Banks and Mahajuns, the inconsistency was as great. The Bank of Bengal, as he said before, would be required to pay ten Rupees and a native Mahajun the same. A Bill which attempted to assimilate both must be most unjust. Could we honestly, justly, or conscientiously take from a person ten Rupees who earned only one hundred Rupees, and the same sum from a person or a Company that earned thousands? it was impossible. He was not quite prepared to go through the whole Bill, as he was not aware that the Bill would be proceeded with this morning. The objections he had made practically applied to other classes as well. He was ready to admit that means might be properly devised for reaching incomes below two hundred Rupees; but he must say that, for the reasons he had explained, he was averse to the present measure being proceeded with in the form in which it was now presented to the Council.

SIR MORDAUNT WELLS said, he confessed that he entertained much the same objections as those taken by the Honorable Member for Bengal in reference to incomes of Rupees two hundred. He saw no reason why a man earning two hundred Rupees a year was to pay seven per cent. on his income, while many who had the means of paying more would pay the same tax. He would instance the Medical profession. A Surgeon in the Presidency with a large practice, perhaps earning some four thousand Rupees a month, would be called upon to pay ten Rupees, while a man who had just come out and hardly making two hundred Rupees a year, would have to pay the same amount; the inequality was so very great, that he could hardly believe it was the intention of his Right Honorable friend to pass the Bill in its present shape. A tax of this kind would fall ten-fold on a man striving hard to make two ends meet, as it would be five per cent on his income, while it would be scarcely anything on the other getting four thousand Rupees a month. He thought this was essentially an injustice, and he would suggest

to his Right Honorable friend to make a distinction. He saw no reason why Members of professions, whether Barristers, Architects, or Engineers, should be liable to the same tax. He was not prepared to say that he was opposed to this Bill as a whole. On the contrary, he was convinced that it would reach many incomes which should be taxed, but which would not come under the Income Tax. He remembered that Sir Robert Peel wished to carry out the Income Tax so as to touch the artisan. He thought that the small manufacturer and artisan was better able to pay than a man on £200 a year who had to keep up an establishment. The only class of professional men who were taxed were a very small body, who were called Special Pleaders. If they numbered so large a body as the Barristers, he was certain they would not be taxed for a day. He believed the Special Pleaders numbered about fifty or sixty gentlemen. It was always considered a most unjust thing to tax those men when a Barrister was not subject to the tax. He did not remember that any others of the legal profession were taxed.

THE CHAIRMAN.—The Attorneys were also taxed?

SIR MORDAUNT WELLS.—Yes, but under very peculiar circumstances, and on quite a different principle.

The reason why Attorneys were taxed was, because they derived certain exclusive privileges as officers of the Court of Queen's Bench. No such privileges were enjoyed by the Medical profession. He would ask why they should not introduce some principle which would secure uniformity, and that was every thing in legislation. Why should they take from a man ten Rupees when he could not afford it, and if compelled, he must give up some necessary of life, or, in other words, he must necessarily deprive himself and his family of many little comforts they might stand in need of. Following up the argument, if they were to take two per cent. from a man's income who lived up to the last farthing, and who had no margin left, what would be the consequence, but positive ruin? He could not be let off as a man who had to pay rates at home and who was discharged therefrom because he was absolutely poor. Was it worth while, for the sake of a few Rupees, to drive a man to such a state? He could not, as a Legislator, sanction such a principle. Before he gave his support to the Bill, he would wish to see its imperfections corrected. He would ask the Council to consider the very great hardship they would entail on poor people. We must remember that there existed here and elsewhere considerable opposition to this Bill, and the representations which had been made by the people here, he must say, had put them forth very moderately indeed. What he wished to suggest to the Right Honorable gentleman was that he should not tax people whose incomes were only two hundred Rupees a year. It would be worth while to make this sacrifice in consideration of the relief which it would afford to poor people. Ten Rupees was a pound, and a pound was a significant sum. It would enable a man to buy a pair of boots or a hat, or it would pay for a fort-night's bazar. In conclusion, he said that he would sooner see the Bill thrown out, than allow it to pass in its present form.

MR. WILSON said, it was rather unfortunate that the two Bills had happened to be discussed at the same time. If the License Bill had been the law of the land a year ago, the anomalies which had been pointed out, would not, he thought, have been apparent. But it was purely by an accident that the two Bills happened to come before the Council at the same time. When he introduced the Bills, he explained how one measure would bear against the other. The principle adopted by him was nearly similar to that now in force in England. All measures of taxation were distasteful to the people, and he was aware of the great excitement which such taxation had created in England. This was what must be expected in every country. The Honorable and learned Judge had stated as a precedent that the Special Pleaders in England were exempted from

the tax, in which he was corrected by the Honorable and learned Chairman. Surely the Honorable and learned Judge could not have forgotten that, when the Income Tax Bills were brought before Parliament by which the Attorneys were made to pay £15 per annum as revenue to the State, how strenuously they endeavored to oppose it. Motions were annually made in Parliament by Lord Robert Grosvenor for the purpose of repealing that provision. He (Mr. Wilson) certainly never remembered more extraneous pressure than that which had been brought to bear on that question, and with every one of the representatives in Parliament, whether Tories, Radicals, or Whigs, the Attorneys exercised a most important influence, but with their united strength they failed to carry their opposition. In 1854, however, the tax was reduced by the Stamp Bill, which he (Mr. Wilson) brought in that year, and since then the matter had been set at rest.

SIR MORDAUNT WELLS—That was just before the dissolution of Parliament.

MR. WILSON said, no, it was just after a general election, and at the beginning of a new Parliament and a new ministry. Then again the learned Judge had entered at great length into the question of the inequality of the tax, and had pictured very vividly the hardship of making a man pay tax who was on the receipt of two hundred Rupees a year. He did not entirely agree with all that his Honorable and learned friend had said, for he must know that in England the lawyer who could hardly pay the rent of his chamber was obliged to pay his £15 per year. The Honorable Member for Bengal had mentioned about the Bank of Bengal having to pay the same as a Mahajun or Native money-lender. Why, the London Banker paid the same as the country Bankers Then as to exempting from this Bill those whose incomes were two hundred Rupees a year, all he would say was that it was not inflicting any very great hardship on any person, for this reason. He would only have to pay two rupees for his license annually. A person who carried on trade and paid taxes, had the immediate advantage of those taxes. But this Bill would not apply to several persons. It would only apply to those carrying on a trade or profession, who had the benefits arising from the success of improved fiscal measures and the general prosperity of the country. It would not apply to any Clerk or to any person deriving his income otherwise than from a trade or profession. The Honorable and learned Judge then said that the Bill made no provision for the relief of persons who were reduced to a state of poverty. But if his Honorable and learned friend would refer to Section IX, he would find that the Collector was authorized "to exempt from payment of the License Duty hereby imposed, any person of whose inability to pay for the same he may be satisfied," and the person so exempted was declared not liable to take out a license under the Act.

SIR MORDAUNT WELLS here explained that he did not put the case of a pauper, but he alluded to men who earned two hundred Rupees a year.

MR. WILSON said, it was only in the case of paupers that relief was granted in England; whereas in the case of a man getting two hundred Rupees a year, there seemed no necessity of affording relief to him. If a man, whatever might be his income or position, had an income, he must pay his tax. There was no difficulty in picturing hardships. There was no tax which did not expose some persons to very great hardships, and did not give rise to some dissatisfaction. We must look to the effect of the measure as a whole. The object of this Bill was to impose a general license fee on Trades and Professions, which should be permanent in its character. Seeing that the operation of two taxes might inflict hardship, it was proposed to fix a small uniform rate. Had we attempted to place it on the income, then he agreed with the Honorable Member for Bengal that it would have been better to include it in the Income Tax. We thought it proper however to make it a general

tax, and one so moderate, that it would not press hardly on any class. As those who receive below two hundred Rupees could not be included in the Income Tax, he thought by this means to reach the whole of the large body of small traders whose incomes might be below two hundred Rupees. Those who heard him knew that that class in England paid a great deal more by indirect taxation, by which means no less a sum than forty-two millions a year were realised—and Customs Duties and Excise upon the common necessaries of life, such as Beer, Sugar, Rum, &c., were very high, so that in the aggregate a very large sum was realised. Without some such tax, there was no means of including in a general taxation the great bulk of the population who were deriving the benefit of British Rule, but who would be exempt from the Income Tax. He thought that the Council had already agreed to the principle of this Bill. As to the rates proposed to be charged, it appeared to him that to a professional man rising in practice, ten Rupees a year was a very trifling sum, and would be a matter of very little importance. He would therefore ask the Council to consider this Bill as a whole system, and unless a strong case of practical oppression or practical inconvenience to particular classes were made out, he would ask them to consider carefully before the principle of the Bill was infringed. No doubt ten Rupees would deprive a man of great many luxuries, but good Government was also a valuable thing. He (Mr. Wilson) did not think that it would really be any hardship to a Banker or a Medical or other professional man to pay a license fee of ten Rupees a year.

SIR MORDAUNT WELLS would simply remark that in many of the Calcutta dispensaries and hospitals there were medical men whose incomes were very small, and ten Rupees would be a large sum for them to pay.

MR. WILSON resumed. All he had to say was that with regard to the whole of the financial measures of Government, after forming the most sanguine expectations of their result, and after making the most extensive calculations of reduction of expenditure, it would be with the greatest possible difficulty that the Government would be able to bring about a financial equilibrium. He did not say that that was any reason why they should inflict hardships or injustice on any class. If the Bill was susceptible of improvement, any modifications which might be suggested with that view would be gladly attended to and carefully considered by him. He hoped however that the Council would regard the Bill, not as a matter of choice, but one of necessity, and he would only remark that the necessity which existed in February was still greater now. Flattering as had been the prospects held out by persons who had no means of knowing the real necessities of the Government, he could only assure the Honorable Members that the necessity was still greater now than he (Mr. Wilson) believed it to be in February last.

THE CHAIRMAN said, he quite agreed in the observations which had fallen from the Honorable and learned Judge. He would, in the first place, ask, what was the object of this Bill? Was it to prevent persons from carrying on a trade or profession who did not take out a license, or was it merely a fiscal measure to raise revenue? He apprehended it was not the intention of the Bill to grant licenses or to place any restriction on the granting of them. To tell a Barrister or Physician that he could not exercise his profession without getting a license from the Collector, was simply absurd. It appeared to him (the Chairman) that the real object was to get money, but that he thought might be done in a much less offensive mode, than by putting a first class Merchant on the same footing with a pawn-broker or a pedlar. He would suggest that every person should have a certificate, as was done in England with regard to Attornies. As a matter of precedent, however, it appeared to him that the Attorney's Certificate Duty was a most unjust tax. Now if he (the Chairman) were in Parliament, he should certainly vote against their being subject to the

tax, for he considered it very unjust to tax them when Barristers were exempted. The Right Honorable gentleman had instanced the case of a legal gentleman struggling hard, and scarcely able to pay for his chamber, being made to pay the tax. Now he (the Chairman) did not see why they should follow the example and compel a person placed under such circumstances to pay. On what principle were they to force a person to pay with starvation staring him in the face and to tell him—"It is true you are striving hard by your industry to get up in the world, but we cannot help it; you must pay the tax?" The reason why Barristers were exempted in England was, because they had greater influence in Parliament. They had the Attorney General, Solicitor General, and the Lord Chancellor.

SIR MORDAUNT WELLS.—And the Press, too.

THE CHAIRMAN continued. He did not see any difference in principle between taxing a Barrister and an Attorney. If the Attorney enjoyed any peculiar privileges, so did the Barrister, or if it were said that the Barrister had to struggle very much at his first outset in practice, it was equally so the case with the Attorney. A Barrister was exempted; on what principle was an Attorney taxed? Was it because an Attorney was offensive or injurious to society? If so, he would say, don't allow him a license, or rather don't give him any certificate at all. He did not see however why he should be singled out from among the others. The Right Honorable gentleman referred the other day to the Queen's Proclamation. He (the Chairman) would ask him, why were Barristers and merchants to be placed on a different footing from Civilians and officers. If the License Fee were intended to be taken from persons who would have to pay the Income Tax, why should it not be taken from all alike?

It appeared to him that this Bill would give a bonus to property over industry. It would give this privilege to a fund-holder or a landlord, not because he had done anything for the benefit of society, but because he happened to be the son of a particular father, from whom he inherited his property; while the professional man, who lived by his own industry, would be obliged to pay. This, it appeared to him (the Chairman), was taxing the bees and allowing the drones to escape. Again, he did not see why this Bill should omit to tax a Civil Servant, or a Judge, or a Member o Council. These were men who could afford to pay better than the poor artisan. Were they exempted, because they were paid by Government?

As he said before, there was no occasion to grant licenses. It was not for a Collector to say to a Barrister or a Physician applying for a license—"In my opinion you are not qualified for the profession in which you are or wish to be engaged." In England licenses were granted to pawn-brokers and others during the Sessions. He thought it was necessary that a pawnbroker should have a license. If it turned out he was a receiver of stolen goods, the license might be taken away from him. He knew not why hawkers and pedlars were taxed; probably because they were not properly represented in the House of Commons.

Then, again, the definition of a profession as given in the Bill included "every Member of any College of Physicians or College of Surgeons, and every Medical Graduate of any University or College, not being in Her Majesty's Army or in Her Majesty's Indian Army; every Architect; every Civil Engineer." He did not see why Physicians, Surgeons, Medical Graduates of Universities and Colleges in Her Majesty's service should have the privilege of being excluded from the tax. Nor did he see any reason why an Army Surgeon, who might be engaged in a very extensive private practice in Calcutta, should be exempt, while the unfortunate Medical man in charge of a Dispensary or a Chemist's shop, who was striving hard with starvation staring him in the face, would be taxed.

MR. WILSON said that, though it was not provided in the Bill, it was intended to tax Army Surgeons if they carried on a private practice.

THE CHAIRMAN continued. Then every Civil Engineer was to be taxed, because he was an uncove-

nanted officer, while the Civil Servant who came out under a covenant was to be exempted. Why, again, should not a Colonel or Major in the Army pay? Why should Officers or Commanders in Her Majesty's Navy be excluded, while the carpenters on board their vessels or artisans in the Government Dockyards were to be subject to the tax? He did not make these observations with the view of throwing any difficulty in the way of the Right Honorable gentleman; but he would suggest to him the propriety of so altering this Section as to make it applicable to any person exercising any business or calling whatever.

MR. WILSON said, the lateness of the hour prevented his making a reply, but he would only remark that the Honorable and learned Chairman's suggestions were worthy of consideration, and were so far different in character from those of the Honorable and learned Judge (Sir Mordaunt Wells) and the Honorable Member for Bengal, that, whereas the former were calculated to increase the revenue, the effect of the latter would be to decrease the revenue. With regard to the Honorable and learned Chairman's allusion to the exemption of landholders from the operation of this Bill, he (Mr. Wilson) thought it proper to mention that it was not considered advisable to tax them any further at present.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council adjourned at 10 o'clock, on the Motion of Sir Bartle Frere, till to-morrow morning at 7 o'clock.

Wednesday Morning, July 4, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq., and
H. B. Harington, Esq.,	Hon'ble Sir M. L. Wells.

ARMS AND AMMUNITION.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of arms and ammunition, and for regulating the right to keep or use the same)," the Council resolved itself into a Committee for the further consideration of the Bill.

THE CHAIRMAN said, when this Bill was last before the Council, he endeavored to draw up a Section to enable the Government to disarm certain districts. That Section had been printed and circulated, but since then he had made some slight alterations, and it was his intention to move the Section in its altered form. Since last Saturday some papers had been brought to his notice which had escaped his recollection. He alluded to certain communications received from the Lieutenant-Governor of the North-Western Provinces on the subject of this Bill, and reports from certain Officers of Government upon the working of Act XXVIII of 1857. To his great surprise, he read some extracts from these papers in the *Hurkaru* newspaper on Monday last. He did not wish to impute blame to any one, but what he wished to call the attention of the Council to was this It was usual to notice in the margins of Reports from Select Committees the communications which were received on the subject of the Bill referred to them. Standing Order 67 provided as follows:—

"All written communications on the subject of Bills published for general information shall be addressed to the Clerk of the Council, who shall cause the same, and also all such petitions as shall be ordered by the Council to be referred to the Select Committee on the Bill, to be printed, and a copy thereof to be forthwith laid before such Select Committee, and to be sent to each Member of the Council."

He believed that these papers were sent to him some months ago, but at different times, and he remembered having read the first page, but he had laid them aside until the present Bill should come on for consideration, and as he had not seen them noticed in the Report of the Select Committee, his attention was not drawn to them

The Chairman

Standing Order 68 provided as follows:—

"The Select Committee shall take into consideration the Bill, and all such written communications, and also all such petitions as shall be referred to them, and shall prepare a Report thereon, and shall in such Report propose any amendments of the Bill which they may think expedient. A copy of the Bill, signed by the Select Committee, shall be annexed to the Report, written or printed, in such a manner as to distinguish the amendments, if any, proposed by the Select Committee from the Bill as published."

When the Report was received by him, he found that it did not allude to the fact that any communications had been received from the Lieutenant-Governor and the local Officers in the North-Western Provinces, nor to the reports on the working of Act XXVIII of 1857, which had been printed on the motion of the Honorable Member for Bengal. The Select Committee did not refer to any of these papers in their Report, and neither on Saturday week nor last Saturday had he any recollection of the existence of these communications. If he had had them in his mind, he should not have failed to have referred to them in support of his own opinion as to the necessity of a disarming Bill. The papers in question certainly suggested the necessity of disarming the Natives in the North-Western Provinces, and not only of preventing them from going armed, but from having arms in their possession also. He found that the North-Western Provinces had not yet been thoroughly disarmed, that a more stringent measure than the Act of 1857 was required, and that it was the opinion of the Lieutenant-Governor and of many experienced Officers in the North-West that Europeans should be exempted from its operation. He regretted that these papers had not been seen by him sooner. The Honorable Member for the North-Western Provinces had proposed to suspend the Standing Orders on Saturday, when the Report of the Select Committee on the amended Bill had not been sent to him until the preceding day.

MR. HARINGTON explained that he did not propose to suspend the Standing Orders on Saturday week, but on Saturday last, on which day Act XXVIII of 1857 would expire.

THE CHAIRMAN resumed. What he had to complain of was that he had not been able to look over the Bill and the Report of the Select Committee, which did not come to him until Friday morning, as the time of the Judges of the Supreme Court was wholly occupied with other matters during the day. He did not wish to throw blame on any one, but he only wished to point out that it was right that Committees should hereafter notice in their Reports the communications which might be received by them, and not make their Report so late as not to give Members an opportunity of considering it before the Bill came on for discussion.

Then turning to these papers, he found in the Punjab Disarming Proclamation of July 1849 the following paragraph:—

"The classes exempted from the penalties of this proclamation are European British subjects, British soldiers while present with their Regiments or on service, and Government Officials employed on civil duties."

Then he found in the communication from the Secretary to the Government North-Western Provinces a great deal that accorded so much with his own views. In paragraph 3 it was thus stated:—

"The work of disarming is hitherto incomplete. In some at least of the districts within the jurisdiction of this Government, the provisions of Act XXVIII have only very recently been put in force."

He would not trouble the Council by reading extracts from the Reports of all the local Officers. He would only read the remarks of the Magistrate of Banda, Mr. Mayne, who said:—

"Of the necessity of thoroughly and permanently disarming the natives of this country there cannot possibly be two opinions, and an Act is of course necessary to empower the Magistrates to do so, but the law should be as simple and concise as possible, such as the Governors and the governed can both under-

stand. If we ever wish to govern the natives of India effectually, we must treat them as they are, and not as civilized and intellectual beings. The laws which we make for them should be adapted to their understanding, and contain rules of the most simple kind and the easiest to be obeyed. * * * Then again it cannot possibly be the intention of Government to disarm European British subjects ; I think therefore it would be more honest and at the same time more dignified to declare the truth. It is not only useless but most injudicious to irritate the English settlers by even nominally including them in such an Act. The time is past for placing no distinction between the European settlers and the natives of the country. The latter have caused the breach and let them take the consequences."

The opinions of many of the other Officers were to the same effect, and they were the opinions of the Officers who had actually been engaged in working out the Act. Then again Mr. Mayne wrote as follows regarding Section V, which related to the disarming of persons going armed :—

"In Section V authority is given to disarm a person, if, in the judgment of the Magistrate or other person it is dangerous to the public peace to allow such person to go armed . disarming should be compulsory, and not left to the judgment of individuals"

The Lieutenant-Governor had offered a similar opinion on this subject. It was said in the letter from the Secretary to the Government of the North-Western Provinces :—

"It appears to the Lieutenant-Governor therefore, that, instead of passing the Bill under notice, simply declaring Act XXVIII of 1857 to be perpetual, it will be preferable to frame a new Act, which shall proceed on the principle that the possession of arms and ammunition and military stores, by the natives of this country, is fraught with danger to the public peace, and which shall arm the Magistrates with ample authority to enforce the surrender of arms, ammunition, sulphur, and military stores of every description, as well as to control and regulate the manufacture and sale of all such articles."

The letter from the Secretary to the Government of the North-Western Provinces went on to say :—

"The general principle declared, certain exemptions from the prohibition to possess arms and ammunition will of course be necessary ; and to those set forth at the 6th Section of the present Act, His Honor would certainly add Europeans, Americans, and other similar classes. To all these the Lieutenant-Governor would concede the privilege of keeping arms and ammunition for their private use (though not of course for sale) without question. Aliens as they for the most part are in a land the population of which has but recently shown the most inveterate hostility to their race and creed, they cannot with any justice (His Honor thinks) be denied the free possession of weapons which they may have occasion at any time to use for their personal protection, or the protection of their property. It cannot for a moment be assumed of these that they will abuse the privilege : no danger to the public peace can be reasonably apprehended from its concession : just the contrary may be anticipated ; and lastly, it appears to His Honor extremely invidious to place this class of Her Majesty's subjects in the same category and under the same restrictions as those who have taught us by bitter experience, how treacherous and truculent they can be, and how unworthy, consequently, they are to be again entrusted with arms of any description. Few, the Lieutenant-Governor imagines, of those even who are opposed on principle to class legislation, will refuse to admit and practically to recognize the broad distinction between the one class and the other in respect of this matter.

"The class of Europeans and others excepted, none should be permitted to possess arms or ammunition even for their private uses without a license to be granted by the Magistrate subject to such conditions of payment, or otherwise as shall be thought necessary."

When this was the opinion of a person of such high standing as the Lieutenant-Governor of the North-Western-Provinces, where the Act had been more stringently carried out than elsewhere, the Select Committee should have noticed in their Report that such a recommendation had been made, but that they did not agree in it. They might have said—"Among the papers referred to us, we find one from the Lieutenant-Governor of the North-Western Provinces, who declares that, in his opinion, Europeans ought to be excepted from the operation of the Act."

Without troubling the Council with any further observations, he begged to move the insertion of the following new Section after Section XXXI :—

"It shall be lawful for the Governor-General in Council or for any Local Government, if it think necessary for the public safety, to order that any district or place shall be disarmed, and in every such district or place

The Chairman

as well as in any district or place to which Act XXVIII of 1857 or Section XXIV of the said Act has been extended, it shall not be lawful for any person to have in his possession any arms mentioned in Section V of this Act, or any percussion caps, sulphur, gunpowder, or other ammunition without a license from the Magistrate or Chief Officer charged with the preservation of the peace of the district. In every such district or place, the order of the Governor-General in Council or of the Local Government shall be published in the *Calcutta Gazette* or in the *Gazette* in which the orders of the Governor-General in Council or of the Local Government making the order, as the case may be, are usually published, and shall also be made public in such other manner as the Governor-General in Council or the Local Government shall direct; and every person who, after the expiration of the time mentioned in such order shall have in his possession or custody any such arms as aforesaid, or any percussion caps, sulphur, gunpowder, or other ammunition, without such license as aforesaid, shall be liable to be imprisoned, with or without hard labor, for a term not exceeding two years, and also to a fine not exceeding one thousand Rupees; and it shall be lawful for the Magistrate or other Officer mentioned in the order to exercise in such district or place the powers of entry, search, and seizure, given by Section XXXI of this Act, subject to the limitation contained therein. The provisions of this Section shall not extend to any person exempted by the authority issuing the order for disarming the district or place, nor to Europeans, Americans, or Eurasians."

MR. HARINGTON said, he proposed to defer any remarks that he might have to make on the Section, the introduction of which had been moved by the Honorable and learned Chairman, until a later stage of the debate which would, doubtless, take place on the proposed Section. But he was anxious to seize the earliest opportunity of saying a few words by way of explanation in reference to what had fallen from the Honorable and learned Chairman respecting the omission of the Select Committee, of which he (Mr. Harington) was a Member, to notice in their Report on the Bill before the Council the reports received from the Governments of the North-Western Provinces and Bengal; and, first, he begged to acknowledge the calm and temperate manner in which the Honorable and learned Chairman had spoken on the subject of the omission of which he had complained; secondly, he had to express his regret at the occurrence of that omission, and to say that the regret which he felt would be greatly increased if the omission specially to notice the reports in question had caused, or was likely to cause injury to any class which would be affected by the Bill; and, thirdly, he begged to assure the Honorable and learned Chairman, that there was no desire, and that there could have been no intent on on the part of the Select Committee to keep out of the view of the Council any papers that had been received on the subject of this Bill. The Council must be aware that, even supposing the Select Committee could have entertained such a desire as that which he had mentioned, they must have been sensible that it was not in their power to accomplish what they wished, simply because they knew that, equally with themselves, a copy of the reports to which he was referring had been previously sent in regular course to every Member of the Council, including the Honorable and learned Chairman, and the Honorable and learned Judge on his right (Sir Mordaunt Wells).

SIR MORDAUNT WELLS here interrupted the speaker, and said that the reports had not come to him.

MR. HARINGTON resumed The Honorable and learned Chairman did not deny that he had received the reports, and he (Mr. Harington) had no doubt that he could show by the office despatch books, that the reports had been sent both to the Honorable and learned Chairman, and to the Honorable and learned Judge's predecessor, Sir Charles Jackson, to whose papers he (Mr Harington) took it for granted that the Honorable and learned Judge had succeeded at the same time that he succeeded to his seat in this Council.

SIR MORDAUNT WELLS said, Sir Charles Jackson had left Calcutta before he was appointed to the Council, and he had received no papers from him.

MR. HARINGTON continued. He presumed then that the Honorable and learned Judge on his appointment had applied to and received

from the office all the papers belonging to his predecessor, relating to Bills and other matters pending before the Council. This was what took place in his own case when he joined the Council, and he believed that it was what was usually done on the occasion of every new Member taking his seat.

MR. FORBES confirmed what Mr. Harington had stated as to the practice of the Council on a change of Members, and added that he did not arrive in Calcutta until after the departure of his predecessor, Mr. Eliott, but that, on his arrival, the whole of Mr. Eliott's papers were sent to him.

SIR MORDAUNT WELLS said, he had not received any papers from the office, except the current papers which had been sent to him in common with the other Members.

MR. HARINGTON said, if all the papers relating to pending Bills had not been sent to the Honorable and learned Judge, he was not to blame. It was the fault of the office. He (Mr. Harington) was not in charge of the office, and was not answerable for its omissions.

The Honorable and learned Judge had also complained of the delay which had taken place in the presentation of the Select Committee's Report on this Bill, which he observed had not been given in until long after it was due. He (Mr. Harington) at once admitted that there had been great delay, for which he was exceedingly sorry, but in self-defence he must say that it arose in a considerable degree from circumstances beyond his control. These circumstances he would proceed to explain. The explanation would bring him to the causes of the omission noticed by the Honorable and learned Chairman in the Report of the Select Committee, and would enable him to show how that omission had occurred. The Bill was read a second time on the 27th August 1859, and in order that it might undergo a full and fair discussion, he (Mr. Harington) put upon the Select Committee the Honorable Member for Bengal, and the Honorable and learned Judge, Sir Charles Jackson, who had spoken most strongly against the Bill, and the late Member for Bombay. This clearly showed that there was no desire on his part to avoid enquiry and discussion, but the contrary. The Council was prorogued from the 6th September till the 12th November, and it did not resume its sittings until the 3rd December. On that day the Honorable Member for Bengal moved for certain returns as to the working of Act XXVIII of 1857. He (Mr. Harington) did not think it necessary to resist the motion, which was acceded to. The returns asked for by the Honorable Member for Bengal were not received until late in March, and the order for their being printed not having been made until the 24th of that month, it was not until the beginning of April that copies were in the hands of Honorable Members. Shortly after it devolved upon him, as a Member of the Select Committee, to revise the Income Tax Bill, and he might say that, until that Bill was settled by the Select Committee and reprinted, it occupied almost the entire time and attention of the Select Committee. He would appeal to the other Members of the Committee whether such was not the case. It was a most difficult Bill to settle As soon as he could command leisure from the Income Tax Bill, he had taken up the Bill before the Committee, which was another very difficult Bill. In the meantime Sir Charles Jackson had left the Council, and the illness of the Honorable Member for Bombay, which had terminated in his death, prevented him from giving much attention to business. The consequence was that he and the Honorable Member for Bengal were left to settle the Bill by themselves. But they differed so materially upon some of the most important parts of the Bill, that at one time he quite despaired of the Select Committee being able to make a Report, and he feared that the Bill would have to be over. The Bill relating to Public Conveyances, and he believed the Bill relating to the cotton frauds at Bombay, were in this predicament. At last, by mutual concessions, he and the Honorable Member for Bengal came

to an agreement as to the alterations which should be recommended to the Council for adoption in the original Bill, or he might say in the present law, and the Honorable Member for Bengal having agreed with him that they might report the Bill, he at once desired the Clerk of the Council, who usually prepared the Reports of Select Committees, to draw up the Report, and he furnished that officer with a memorandum of the alterations proposed to be introduced into the Bill. He presented the Report of the Select Committee the same evening and having explained to the Council the alterations which the Select Committee advised should be made in the Bill, he gave notice that at the next meeting of the Council he should move that the Council should resolve itself into a Committee of the whole Council upon the Bill. He gave this early notice as the period for which the law then in force was passed was drawing to a close, but there was still ample time for the new Act to pass before the expiration of that period, and he took steps to secure the early receipt by Honorable Members of the amendments proposed by the Select Committee. This was the explanation which he had to give of the delay that had taken place in the presentation of the Select Committee's Report, and now as regarded the omission noticed by the Honorable and learned Chairman in that report. It was formerly the practice to enter in the margin of the second paragraph of the Reports of Select Committees all petitions, communications, and other papers referred to the Select Committee for consideration, and they were generally alluded to in these words :—"The communications and petitions mentioned in the margin were referred to the Select Committee, and have received their attention." This paragraph was inserted by the Clerk of the Council or one of his assistants, as a matter of course, and its insertion may be said to have been a mere mechanical process. For some little time past the paragraph had been omitted. The reason for the change he was unable to explain, but the fact of the omission might be established by several Reports presented before the Report under consideration, and more particularly by the Report presented on the Income Tax Bill, in the margin of which no list was given of the numerous petitions presented against that Bill. He mentioned this to show that, whether the discontinuance of the practice was right or wrong, it took place before the presentation of the Report on the Arms Bill and was no act of his. He did not see the Report on the Arms Bill until just before he presented it, and he did not notice at the time that there was no specification in the margin of the reports or petitions received and referred to the Select Committee on the Bill. Had he observed the omission, it was quite possible that he should not have noticed it in reference to what he had just stated as regarded the recent practice in drawing up Reports of this nature. There could be no doubt that, as observed by the Honorable and learned Chairman, the Standing Orders of the Council had latterly been disregarded in this respect as well as in other respects, and he quite agreed with the Honorable and learned Chairman that they should at once revert to the former practice, which was in accordance with the Standing Orders. At the same time he must say in excuse of what had taken place, that the duties of the office had for some time past been extremely heavy, and it ought to be no matter of surprise, much less of blame if, while the pressure lasted, the prescribed forms were not attended to with all the regularity and strictness which were observed in the office of the Clerk of the Council when the work of his Office was of a less laborious character. In conclusion, he begged to assure the Council that the reports received from the Lieutenant-Governors of the Lower and North-Western Provinces of Bengal, and the officers subordinate to them, had been most carefully considered by the Select Committee, and had been discussed by that Committee again and again. He was sure his Honorable friend the Member for Bengal would bear him

out in this statement. (Mr. Sconce intimated his assent.) There was one other remark which he wished to make in reference to some of the suggestions of the Honorable the Lieutenant-Governor of the North-Western Provinces, which the Select Committee had not judged it proper to adopt, namely, that for some time past the idea had prevailed that, when the Select Committee did not follow the suggestions of the local Governments, it was hardly respectful to those Governments to discuss their suggestions in the Reports of the Select Committee, and to give reasons for not adopting them. He begged to apologise for having occupied so much of the time of the Council about a matter personal to himself and the other Members of the Select Committee on the present Bill, and to thank the Council for the hearing that they had so kindly accorded to him.

SIR MORDAUNT WELLS said, it was quite impossible, after the explanation given by the Honorable Member for the North-Western Provinces, to suppose that the omission in question arose otherwise than from an accident. Indeed, it appeared that the omission was rather in accordance with practice than otherwise, and therefore no imputation whatever rested on his Honorable friend; and he (Sir Mordaunt Wells) entirely concurred in all that his Honorable and learned friend in the Chair had stated on the subject. But still the fact remained that, in consequence of his (Sir Mordaunt Wells') having so recently joined the Council, he had not known of these papers till he saw extracts from them in the *Hurkaru* newspaper; and he therefore wished the Council to see the situation in which he was placed last Saturday, when he voted against the amendment of his Honorable and learned friend. Very shortly after his (Sir Mordaunt Wells') appointment to the Council, this Bill was brought up for consideration. He saw and knew nothing personally about the past history of the question. The first papers which he received on the subject were the Report of the Select Committee and the amended Bill. They were sent to him on Friday morning, the following day (Saturday) being the day fixed for the consideration of the Bill. In looking into the Bill, finding a reference made to the Act of 1857, he compared it with the Bill Section by Section, and he was surprised to find the Bill totally different from the Act. Among the papers which he received with the Report was the statement of objects and reasons, in which he read as follows :—

"So far as I am aware, the Act has worked well. Every one of its provisions was carefully considered by a Committee of the whole Council before it was allowed to stand as part of the Act. No modifications have been proposed, and none seem to me to be called for."

He was in total ignorance as to the reason of the change, and asked the Government to be satisfied with the former Act, against which he was not then aware there were any complaints. Consequently his vote against the amendment of his Honorable and learned friend was one which he was obliged to give after the alteration proposed by his Right Honorable friend, which he understood to have placed the Bill on the same footing with the Act of 1857. If he had seen the opinions of Mr. Mayne, one of the ablest gentlemen in the Civil Service, of Mr. Batten, Captain Fenton, Mr. Williams, and others, all of them Civil Officers of several years standing, and if he added to these the opinion of the Lieutenant-Governor of the North-Western Provinces, that Europeans ought to be exempted, he would ask the Council whether he could have voted in favor of the continuance of the Act of 1857 without exempting Europeans. The following was the Report of the Lieutenant-Governor of the North-Western Provinces :—

"It appears to the Lieutenant-Governor, therefore, that, instead of passing the Bill under notice, simply declaring Act XXVIII of 1857 to be perpetual, it will be preferable to frame a new Act, which shall proceed on the principle that the possession of arms and ammunition and military stores, by the natives of this country, is fraught with danger to the public peace, and which shall

arm the Magistrates with ample authority to enforce the surrender of arms, ammunition, sulphur, and military stores of every description, as well as to control and regulate the manufacture and sale of all such articles.

"The general principle declared, certain exemptions from the prohibition to possess arms and ammunition will of course be necessary; and to those set forth at the 6th Section of the present Act, His Honor would certainly add Europeans, Americans, and other similar classes. To all these the Lieutenant-Governor would concede the privilege of keeping arms and ammunition for their private use (though not of course for sale) without question. Aliens as they for the most part are in a land the population of which has but recently shown the most inveterate hostility to their race and creed, they cannot, with any justice (His Honor thinks) be denied the free possession of weapons which they may have occasion, at any time, to use for their personal protection, or the protection of their property. It cannot for a moment be assumed of these that they will abuse the privilege; no danger to the public peace can be reasonably apprehended from its concession: just the contrary may be anticipated; and, lastly, it appears to His Honor extremely invidious to place this class of Her Majesty's subjects in the same category and under the same restrictions as those who have taught us, by bitter experience, how treacherous and truculent they can be, and how unworthy, consequently, they are to be again entrusted with arms of any description. Few, the Lieutenant-Governor imagines, of those even who are opposed on principle to class legislation, will refuse to admit and practically to recognize the broad distinction between the one class and the other in respect of this matter.

"The class of Europeans and others excepted, none should be permitted to possess arms or ammunition even for their private uses without a license to be granted by the Magistrate, subject to such conditions of payment or otherwise as shall be thought necessary."

Could he have supposed that the Honorable Member for the North-Western Provinces would have recommended a measure which was directly opposed to the opinions of his own Lieutenant-Governor and other high officials under him, who had the responsibility of carrying on the work of disarming, without even noticing those opinions? Was there any thing settled or defined, on the part of the Executive Government, stated to the Council, which could induce him to accept their opinion instead of these? It must be remembered that what the Lieutenant-Governor and the Officers in the North-Western Provinces had said could not be attributed to mere fancy on their part, nor to any class feeling. Theirs was the language of experience. Could we set at naught the strong advice which these gentlemen had given us, namely, that you must not disarm the European population, because, if you did, you would jeopardize their lives and property. Disregard if you pleased the opinions of the commercial community in Calcutta; disregard the opinions of the Judges of the Supreme Court. But could this Council disregard and ignore the well-defined and firmly expressed opinions of the Lieutenant-Governor and the officials of the very Province regarding which they were proposing to legislate? If it were to be said that we were to act on private communications, he was of opinion that we ought not to do so. We must act on public communications and them only. When Mr. Mayne and the other gentlemen expressed these opinions, they did so on public grounds, and they had a right to be heard and listened to. It had been said that there was an antagonism existing between Civilians and Non-officials; he did not believe it. He believed the opinions of the Civilians were in full harmony with those of the other classes on this question. On the whole, then, he did not see why he should allow a law to be re-enacted contrary to the opinions of those who might be supposed to be the best judges in the matter, and therefore he saw no reason for continuing to vote against the exemption of Europeans. If we went against the opinions of such men we should not be acting on safe grounds. The Honorable Member of Council opposite (Sir Bartle Frere) had said that the Government were prepared to take the Bill without the disarming Clause. Had the Honorable gentleman read the opinions of the Officers contained in these papers? [Sir Mordaunt Wells here read extracts from several of these Reports.] It was quite clear from those communications, he observed, that the North-Western Provinces had not yet been disarmed. Now what was he (Sir Mordaunt Wells) to do as a legislator in the face of these reports. Suppose by any system of timid legislation we put arms into the hands of men

already stained with the blackest crimes; could we doubt as to what would be the effect of such legislation four or five years hence? Was this a matter on which we should act according to theory merely? The Lieutenant-Governor had said that you must not disarm Europeans—the natives must not know that you were placing a ban on loyal Europeans. He (Sir Mordaunt Wells) thought that this was a most important question. He repudiated strongly the notion of this being a matter of class legislation. As he had said before, he placed entire confidence in the Executive Government; but yet he must ask them in a matter of this importance not to run away with a theory by setting aside the opinions of the high authorities who had had a practical knowledge of the working of the Act of 1857, and who must be considered to be better judges, he must be allowed to say, without meaning any disrespect, than the Honorable Member of Council opposite (Sir Bartle Frere) and his Right Honorable friend. He would take the liberty of telling them that, if they attempted to legislate without a knowledge and without taking a comprehensive view of existing facts, their legislation could not but be considered crude, and prove abortive. Let us, however, by a bold measure, impress on the minds of the natives that we were really in earnest. Don't let them say of the Government, "Look, what they are doing; they are placing Europeans under the same ban with us." How great also would be the disappointment of the Lieutenant-Governor of the North-Western Provinces, and his Officers, if this Bill were to go back to them in a form contrary to their advice, thus placing him under the necessity of telling the Europeans, "Gentlemen, I have done my best, and I was led to expect that the Honorable Member who represented these Provinces would have carried out a comprehensive measure in accordance with the facts I have set forth, and in accordance with the strong representations I have made on the subject, instead of carrying out a measure based on totally different principles."

Under these circumstances, he (Sir Mordaunt Wells) declared his determination to support the amendment of his Honorable and learned friend. After the disclosures which had been made, he considered himself released from the vote which he gave on the former occasion, and he rejoiced that he was released from it. He took his stand upon these official papers; he took his stand upon the perfect information which they disclosed; and, above all, he took his stand on the statement of the Honorable Member for the North-Western Provinces, that Europeans as a class could claim exemption, although the Honorable Member might hold a different opinion now. His Right Honorable friend had made allusion to the Queen's Proclamation. He (Sir Mordaunt Wells) would observe that, when Her Gracious Majesty spoke of equal legislation, surely it was not intended that it was unequal legislation to deal out justice to a body of loyal Europeans. The impartial administration of the law was what the Queen's Proclamation asserted—not the subjecting Europeans to a Disarming Act lest you would give offence to the prejudices of the natives if you disarmed them alone. He would not waste a moment in arguing about this being a Police Bill. He denied it *in toto*. He had been charged elsewhere with having dealt severely with Europeans in Criminal cases. He had no objection to provide most stringent laws against European murderers, thieves, and other offenders; but this was a different matter that we were considering. We now had a rock to stand upon in the papers to which he had referred. Was he, as a legislator, to take the advice of two or three Honorable gentlemen here, in preference to the opinions of those who had had the practical working of the Act. He cared nothing about private communications. It was due to the natives and to all classes of the community that we should legislate on well-defined principles. He asked the Council most earnestly to pass this Clause, and he concluded by thanking them for having allowed him

to express his opinion, as well as for the attention which they had paid to his observations. He could sincerely assure them that he entertained a strong conviction on the question. Whilst he had the honor of a seat in this Council, he felt that he was bound to support what he believed to be strict justice to all classes.

MR. SCONCE said, he wished to make a few remarks, both with reference to what had fallen from the Honorable and learned Chairman and the Honorable and learned Judge on his left. He felt some doubt as to the mode in which he should open the observations he had to make. It appeared to him that his Honorable and learned friends had repeatedly mixed up two entirely distinct questions—one, the disarming of the population; and the other, the policy of exempting Europeans. And it appeared to be apprehended by the Honorable and learned Judge near him that the Council might not affirm or reject the first proposition on its own merits, but would accept the law only on the condition of including Europeans within its provisions. Now his opinion was strong against continuing Act XXVIII of 1857 as a general Disarming Act, but at the same time it might be in the recollection of the Council that in the late debate he had distinctly stated that in his opinion the present Bill, as amended in the Committee of the whole Council, was by no means an adequate substitute for the expiring Act. The Select Committee, composed of his Honorable friend opposite (Mr. Harington) and himself, went much farther. In lieu of adopting the system of a continual search for arms, as provided by Act XXVIII of 1857, the Select Committee proposed to license the carrying of arms. He thought however that this might not be enough; and that it might be necessary to register and license the possession of arms. It seemed to him that, as by this measure you would know at all times in what villages and to what extent arms were possessed by the people, you would have in your hands the means of providing against the dangerous use of arms. The Honorable and learned Judge assured them that the districts in the North-Western Provinces were still full of arms, but he must doubt the facts to which reference had been made. If the Council would refer to the report of the Lieutenant-Governor of the North-Western Provinces, dated two months later than that from which the Honorable and learned Judge had quoted, he would find it stated as follows:—

"The work of disarming is hitherto incomplete. In some at least of the districts within the jurisdiction of this Government, the provisions of Act XXVIII have only very recently been put in force."

And further on it is said:—

"From all these circumstances it may be reasonably assumed that the disarming of these Provinces cannot be affirmed to be either thorough or complete."

And certainly it appeared to him that, though the disarming of the North-Western Provinces might be incomplete, the report of the Lieutenant-Governor did not support the statement of the Honorable and learned gentleman, that Act XXVIII of 1857 had little or no effect in disarming the people. He might remark that with the report was sent up a return of arms which had been taken. The return had not been printed; or if so, we should have known the quantity of arms actually taken.

As to the exact mode in which the Act was carried out, he found that the great powers which it conveyed were harshly and illegally exercised. If he mistook not, one of the Officers, on whose judgment his Honorable and learned friend relied so much, did tell us as to the mode in which he considered it proper to carry out the Act. He said:—

"I look upon Act XXVIII of 1857 as an utter abomination. Its machinery is cumbrous, very complicated, and completely beyond the comprehension of the people of the country. Some of its provisions may be good for Presidency Towns, but are singularly ill adapted for the Provinces. Many Districts have been disarmed; but I feel confident the Act has not been carried out in any on

single district. Had indeed any Magistrate kept to the law, the amount of arms seized would have been very very small. What then is the use of retaining a law which is a mere sham ?"

Thus we had Mr. Mayne's authority for saying that the law was a sham, and that he took every means in his power to seize arms without the authority of law. Be this, however, as it might, the chief question before the Council he (Mr. Sconce) apprehended to be this, whether we were to continue the provisions for totally disarming the several districts in the Upper Provinces ? If the Lieutenant-Governor and the Officers subordinate to him recommended a continuance of that law, they expressed the grounds of their opinion in such a form, that he (Mr. Sconce) for one could not assent to the proposal. It was true that the residents of the Lower Provinces could not by any means appreciate the feelings which residents during the mutiny in the Upper Provinces might have been led to form. But whatever allowance one might make on such grounds, it seemed to him that it was inexpedient, by house to house visitation, and by rigid search, to attempt to remove the arms of all the people. Not only were we to consider the districts immediately under the Government of the Lieutenant-Governor of the North-Western Provinces, but also other adjoining districts, with reference to which he would ask the Council to consider whether it was expedient to have two different laws on the same subject. Take for example the Nagpore Province, which adjoined the North-Western Provinces. The Commissioner of Nagpore said :—

"I am of opinion that the enforcement of the provisions of any such Act would be both unwise and inexpedient. Its introduction moreover would be attended with considerable annoyance and dissatisfaction, and be productive of much alarm."

Then we had the Eastern districts of the North-Western Provinces, namely Ghazeepore and Gorruckpore, which bordered on the Bengal district of Chuprah : and as the Council were probably not prepared to disarm Chuprah or any other neighbouring Bengal district, it seemed to him to be not desirable to attempt to enforce a more rigid law in districts separated from Chuprah by little more than an imaginary line. He did not wish to press too much upon the opinions expressed by the Officers of the North-Western Provinces, and he should not have done so had not the Honorable and learned Judge asked us to legislate according to facts which now existed. See what Mr. Williams, the Commissioner of Meerut, said—

"It may be argued that the punishment which was sufficient in Meerut should suffice everywhere. It will not now, where whole communities have concealed and withheld their arms ; nothing but the knowledge that persistence in this course will involve utter ruin, will persuade them to give them up."

SIR MORDAUNT WELLS here remarked that what Mr Mayne meant to say was explained in a subsequent part of his letter, where he mentioned that "no portion of the community will benefit more by it (that is disarming) than the natives of the country."

MR. SCONCE continued. He would proceed to read Mr. Williams' idea of the punishment to be inflicted in such cases—

"This punishment must be no petty fine of one Rupee for one spear, three for other weapons, four for a sword, and eight for a gun, which the people will gladly pay ; but where the whole village obstinately retains the arms, confiscation of all rights avoidable only by the surrender of a certain number of arms in a fixed time ; and where individuals do, the award of a heavy fine on the head man and every offending individual, on payment of which the different kind of arms may be taken at fixed high rates, say in lieu of fifty Rupees a gun, thirty Rupees a sword, twenty Rupees a spear, and ten Rupees any other kind of weapon. In default of payment in cash or in weapons, imprisonment or corporal punishment to be inflicted at the discretion of the Magistrate."

SIR MORDAUNT WELLS said that the part of Mr. Mayne's letter which had just been read must be

taken in connection with the following paragraph of his letter :—

"The complete disarming of the population, now and for ever, is a most politic and expedient measure in every way. No portion of the community will benefit more by it than the natives of the country, who will, when the disarming is thoroughly carried out, be to a great extent saved from the sin and suffering which was formerly the consequence of arms being always ready at hand. But it must be universally enforced, and that it can be only by the law giving ample and full power to the Executive Officer."

MR. SCONCE resumed. He did not use his own words but the words of the Commissioner. If we were to take arms only by scoring men's backs at the discretion of the Magistrate, he thought that the Bill had better be given up altogether. The punishment proposed, however, was not only by excessive fines or corporal punishment, but a recommendation made by several of the District Officers and supported by the Lieutenant Governor was, that without knowing whether arms were possessed or not, a district should be assessed as containing such and such a quantity of arms, and be required to deliver them up. The Secretary to the Government of the North-Western Provinces writes as follows on this point :—

"His Honor would therefore give authority to the Magistrate, whenever he may have reasonable cause to suppose that arms, ammunition, &c., are concealed within the boundaries of any village, to call upon the proprietors to point out the places where they are concealed, or to deliver them up within a time to be given; and, on failure, to attach at once all proprietary rights and interests, with a view to confiscation, after the expiry of one month, if the arms, &c., according to the assessment which the Magistrate may think fit to declare, should not be surrendered within that period, calculated from the date of attachment. All such confiscations should be subject to confirmation by the Commissioner of the Division."

To his mind such a recommendation was abhorrent. A purely ideal assessment of arms was to be made, and if this conjectural demand were not discharged by the people, all proprietary rights in the village were to be confiscated. He could not accede to recommendations like these. He (Mr. Sconce) was of opinion that it was not necessary to continue the disarming operations; it was, he thought, an unnecessary and a bad law: and if unhappily the Council were to adopt the proposal submitted to them, he was not prepared to object to the amendment of the Honorable and learned Chairman, which would exclude Europeans from its provisions. He would suggest, however, that the Section, as proposed, might be made into three Clauses, and each of them be considered separately.

THE CHAIRMAN said, he had no objection to the Clauses being considered separately, though if the exemption-proviso were not carried, he reserved to himself the right of voting against the third reading of the Bill.

MR. FORBES was happy to say that it had not been found necessary to introduce the general provisions of Act XXVIII of 1857 in any part of the Madras Presidency, excepting in the northern part of Canara, which, bordering on the Southern Mahrattan country, had been subject to some disturbance. Throughout the rest of the Presidency only those parts of the Act, which referred to the registration and sale of arms and ammunition had been introduced, but there had been no general search for arms. He should not have thought it necessary to occupy any of the time of the Council to-day, but for the call which the Honorable and learned Judge had made upon the Council to adopt the recommendation of the Lieutenant Governor of the North-Western Provinces and several of the Officers acting under him, that Europeans should be exempted from the Arms Act. The Honorable and learned Judge made this call upon the Council, not upon the ground that the recommendation was good in itself, though he (Mr. Forbes) was quite sure that the learned gentleman thought it was good, but solely upon the ground that the recommendation came from such high authority as the Lieutenant-Governor, and from gentlemen of such extensive experience as the Officers whose opinions the Lieutenant-Gover-

nor had adopted, and the Honorable and learned Judge had said that, had the papers which contained this recommendation been before him on Saturday last, he should have voted with, and not against, the motion of the Honorable and learned Chairman, that Europeans should be exempted from the operation of the Arms Act. The Honorable and learned Judge had said that, if the Council should go against the Lieutenant Governor and his officers, it would go against what was advised on public grounds; he had asked the Council whether it was, or was not, to act on the opinion of those gentlemen whose reports were forwarded by the Lieutenant-Governor, and had said that in those opinions the Council had a rock on which to stand. Although he was sure that the papers he had referred to had been carefully considered by the Honorable and learned Judge, he could not help thinking that his argument, that we should adopt the Lieutenant-Governor's recommendation, *because* it was made by the Lieutenant-Governor, would lead the Honorable and learned Judge much farther than he contemplated. If the high position of the Lieutenant-Governor of the North-Western Provinces, and the experience of the Officers whose opinions he adopted were sufficient *in themselves* to lead this Council to accept their recommendations regarding the exemption of Europeans, they must, he (Mr. Forbes) conceived, be equally binding on the Council in respect to the other matters on which opinion was no less strongly given and legislation no less forcibly recommended. But to what would this lead us? The Honorable Member for Bengal had anticipated much that he had intended to say, but he would ask the Council to let him read some extracts from the correspondence sent up to them by the Lieutenant-Governor. Mr. Hume, the Magistrate of Etawah,

"proposes that the same population test, which is applied for ascertaining approximately the number of arms in any given portion of a district, should be held to be sufficient to establish inferentially the concealment to a greater or less extent of their arms by the inhabitants of the said tract. Mr. Hume therefore proposes that each District should be divided into convenient circles, that the inhabitants of each such circle should be called upon to surrender the quota of arms they have been estimated to possess, and that failure to make up their quota should be deemed sufficient proof of wilful concealment."

Now what was the plain meaning of that? Why, that if in village A, with a population of 100 persons, 50 arms were found, the Magistrate was to assume that the same proportion of arms was possessed by the inhabitants of villages B, C, and D, and so on, to the end of the alphabet, and was to punish the inhabitants of those villages if they did not produce the number of arms which, under the merest suspicion, he chose to say that they possessed And how was he to punish them? Why on that point we were not left in doubt, for the Lieutenant-Governor in the letter of his Secretary said that he

"would give authority to the Magistrate whenever he may have reasonable cause"—

and we had just seen what reasonable cause was, namely, the possession of arms by *other* people—

"to suppose that arms, ammunition, &c., are concealed within the boundaries of any village, to call upon the proprietors to point out the places where they are concealed, or to deliver them up within a time to be given, and, after failure, to attach at once all proprietary rights and interests, with a view to confiscation after the expiry of one month, if the arms, &c., *according to the assessment which the Magistrate may think fit to declare*, should not be surrendered within that period."

But this was not all, for

"the Magistrate should also, in His Honor's view, be empowered to punish all persons who may refuse to produce their arms and ammunition on requisition, with corporal punishment, to the extent of one hundred stripes with the ratan in addition to imprisonment."

So that they were called upon by the Honorable and learned Judge to exempt Europeans from the Arms Bill, *because* the exemption was recommended by the Lieutenant-Governor of the North-Western Provinces, and the Officers acting under him, when

precisely the same argument would lead them to enact that, if the same proportion of arms to population which might be found in one village were not produced from another, the whole proprietary right in the village should be confiscated, and, on this mere suspicion, every one of the male inhabitants should be punished with one hundred stripes in addition to imprisonment.

He (Mr. Forbes), for one, was not willing to adopt this course, nor, with the highest respect for the position and character of the Lieutenant-Governor, was he willing to follow his recommendations in this matter, on the sole ground that they were made by him, and without considering the nature of the recommendations themselves.

SIR BARTLE FRERE said that at that late hour he would make but a very few remarks. And first, as to a matter rather personal to himself, as regarded the papers from the Government of the North-Western Provinces, which had been this morning so much referred to, he stood in precisely the same position and for the same reasons as his Honorable and learned friend the Chairman. He was quite unaware of the existence and consequently of the contents of those papers, until his attention was drawn to them by the Honorable Member for Bengal late on Saturday evening, and he had not read them when he spoke on that day on the subject of this Bill. He mentioned this, not to justify any alteration in his opinion which remained the same as before, still less to impute any blame to any one. The omission to draw the notice of the Council to those papers, which did not reach the Council through the Executive Government of India, was a pure accident, such as must occasionally occur, and he was only surprised that, under such a pressure of business, so few mistakes of the kind ever occurred. He mentioned his position with regard to these papers, simply to show that his silence regarding them arose from his being unaware of their existence.

He (Sir Bartle Frere) had said, that he did not at all concur in the opinions generally expressed in those papers, and that they made no change in the view taken by the Executive Government regarding the Bill now before the Council. In explaining the reason of this, he would briefly advert to the two distinct points raised by the Clause which his Honorable and learned friend had proposed to insert.

He would take first the proposal to exempt "Europeans, Americans, and Eurasians" from the operation of the Clause. And without going further into this question, which had been so fully discussed already, he begged to remind his Honorable and learned friend, that, as regards the Act of 1857, this exemption stood on a very different footing from the body of the Clause which granted the power to search for arms. No such exemptions were provided for in the Bill of 1857, and if his Honorable and learned friends, as the learned Judge opposite had repeatedly intimated, were willing to stand by and re-enact the Act of 1857, no such exemption would be included by re-enacting the provisions of that Act. The Honorable and learned Chairman had laid great stress on the fresh argument in favor of this exemption, which he stated was contained in the papers before them, and which was derived from the authority due to the opinions of the Lieutenant-Governor and high public Officers in the North-Western Provinces, and to the precedent of the Punjab proclamation. But he (Sir Bartle Frere) need not remind his Honorable and learned friend, that the weight of a precedent or authority in making a law was very different from that which belonged to it in the administration of law. In the latter case, the authority or precedent must be more or less attended to, whatever we might think of its intrinsic reasonableness. In making a law, however, no precedent or authority was, he submitted, of the slightest value, unless it could be shown to be *per se* reasonable.

He would again beg the candid attention of his Right Honorable friend to the fact that the present was a Bill to regulate the possession of arms, to allow all persons against whom no

ground of suspicion existed, be they Europeans or Natives, to carry arms for their necessary uses, and to prevent all other persons from carrying them. It was a Bill, as the Title stated, "for regulating the right to keep and use arms;" so was the Act of 1857. It was not intended as a "ban," as it had been described, or as a penal measure; and unless a European was a bad or suspicious character, the disarming or penal Clauses of the Act could not apply to him. The question was not, were Europeans to be disarmed? but simply were Europeans to enjoy an exemption above the law which regulated the right of all British subjects in India to keep and use arms, which secured those arms to the peaceable and well disposed, and removed them from the hands of the evil disposed and disloyal? His Honorable and learned friend had repeatedly asked, were we to refuse to exempt Europeans, because we were afraid that the exemption would give offence to certain classes of the natives? Once for all, he (Sir Bartle Frere) begged to assure his Honorable and learned friend, that no such fear of giving offence actuated the Government of India in the view it had taken of this matter. He could say for himself, and he felt certain for his colleagues, that no such consideration weighed with them. They considered it their duty to propose to the Council such laws as were just and right in themselves, and not to be deterred from so doing, even if they might unfortunately for a while give offence to any class of Her Majesty's subjects. His Honorable and learned friend had laid great stress on the exemption of Europeans, which was found in the rules for disarming the Punjab, but he (Sir Bartle Frere) would remind him, that these Punjab rules were enacted in 1849, long before the mutiny, and at a time when the present unhappy discussions were not dreamt of. Nothing, he felt certain, was farther from the intention of Sir Henry Lawrence, who drew up those rules, than to stigmatise the natives of India as a body untrustworthy, disloyal, and unfit to be trusted with arms. The rules were drawn up immediately after the conquest of a martial and well-armed nation, at a time when there were not a dozen Europeans in the Province, except the Soldiers and Officers of the conquering Government, and the exemption was nothing more than a direction to prevent the Police interfering with those who carried arms as a matter of duty. Such a provision was quite a different thing from inserting in a general law an exemption avowedly founded on the principle that the natives, as a body, were disloyal and not fit to be trusted with arms.

So much for this exemption of Europeans. He (Sir Bartle Frere) would now address himself to the provisions of the proposed Clause for disarming particular districts or places.

On a former occasion, he (Sir Bartle Frere) had stated that the Executive Government were content with the provisions of the Bill as it now stood. Since then the opinions of the Officers in the North-Western Provinces on this point also, which, as he stated, he had not seen when he last addressed the Council, had been attentively considered by the Executive Government, who were not disposed to alter the opinion he had before expressed. He (Sir Bartle Frere) had been and still continued of opinion, that the best means of disarming a population was to check the habit of walking about armed, and his experience proved was the most effectual means of weaning a population from the habit of keeping arms. If police rules for this purpose were effectually carried out, arms would shortly cease to be generally found in the possession of any but those who required them for lawful purposes—or who, from their position and stake in the country, could not be considered as classes dangerous to the public peace. From the papers before them, no doubt high authorities could be quoted for a different view. He would only quote one in support of his own opinion, the weight of which would, he felt certain, be generally admitted. Sir Charles Napier, when he wished to disarm the population of Sind, contented himself with prohibiting the carrying of arms in public, and strictly forbad any general domiciliary

search for arms. The Punjab disarming rules were borrowed from the rules laid down by Sir Charles Napier in Sind; and in the Punjab also he believed no domiciliary visits and general searching of houses for arms were ever permitted, in the manner advocated by so many Officers in the North-Western Provinces. Both in Sind and in the Punjab the work of disarming had been most effectually done without exciting the general opposition and ill-will admitted by the Officers of the North-West, as having been produced by the measures they advocated. He (Sir Bartle Frere) did not deny that occasions might arise in particular districts, among particular populations, when it might be necessary to search for arms, house by house, and he had considered and still considered that the provisions of Section XXXI of the Act before them were sufficient for this purpose; but as the Council seemed generally of opinion that they were not, he had no objection to the course suggested by his Right Honorable friend opposite, for giving the right of search which was provided in the Clause before them. The Government of India regarded this power of search as a power not to be lightly given, nor exercised on all occasions as an ordinary measure of police. It was a power which, in all countries, was liable to great and serious abuses, and dangerous to all, but in great emergencies. He (Sir Bartle Frere) doubted whether you could disarm, you certainly could not rule, India, by granting indiscriminately power to make domiciliary visits in search of arms. His Honorable and learned friend opposite had asked, had the Government any defined policy? He (Sir Bartle Frere) could assure him, that the Government had on this head a policy both fixed and defined; it was their policy to endeavor to rule by impressing on the natives of this country the conviction that the British Government was stronger, wiser, more merciful, and more just, than any other possible Government, and he (Sir Bartle Frere) believed that, if, in all our arrangements, whether police or otherwise, we endeavored so to act as to impress the people with this conviction, we should maintain our hold on the country far more effectually than by the most stringent powers to search for arms, and all those other measures which were advocated by those who would reduce our rule to a mere question of physical force.

MR. HARINGTON said, the new Section which the Honorable and learned Vice-President proposed to add to the Bill, as noticed by the Honorable Member for Bengal, raised two quite distinct questions, namely, *first*, whether, looking to the character of the Section, it should be introduced at all; and, *secondly*, whether, in the event of its being determined to introduce the Section into the Bill, it should be of general application, extending alike to all classes, or if some, then what classes should be expressly exempted from the operation of the Section. He proposed to consider the latter question first, and as the subject had already been so fully discussed at the last Meeting of the Committee, in dealing with this part of the Section, he should confine himself to a very few remarks. The Honorable and learned Judge on his right (Sir Mordaunt Wells) had quoted the testimony which he (Mr. Harington) had borne in that room more than once in favor of Europeans, and he was quite ready to repeat all that he had stated on the occasions alluded to. He said now, as he said then, that, if the Council had to consider the European population alone, no such Section as that under consideration could have been proposed for their adoption, because a Disarming Act for India would not have been necessary. He freely admitted that Europeans as a class might safely be entrusted with the possession and use of arms of all kinds, and to any extent, without any regulation, though there were not a few individuals belonging to that section of the community who must be regarded as exceptions, and the number of such men was no doubt increasing rapidly and largely. It seemed to be thought that he (Mr. Harington) was opposed to

the settlement of Europeans in the interior of the country, and that he was actuated by a feeling of hostility towards them as a class. In his speeches in that Chamber he was not in the habit of interlarding what he said with remarks about the advantages to the country of European skill, European science, European residence, and European capital. It was, he thought, a self-evident proposition, and it must be patent to every one that the utmost benefit in every way could not but result both to the Government and to the country, to India and to England, from a large settlement of respectable Europeans in the country, whether as Indigo Planters, Merchants, traders, or landholders. They could not have too many. No one could be more sensible of this than he was. He always rejoiced when he heard of a European buying an estate in the interior of the country, because he felt that, in the management of the property, he would exercise a powerful influence for good on all around him, and would set an example to his native neighbors, which they would do well to follow. He felt that he could safely appeal to a long official career in the interior of the country in confirmation of the assertion that he had always given to the European settlers in his district all the support in his power, consistently with his duty to the district at large as an Officer of Government But what were they now asked to do? A law of a general nature was required —a law intended for the whole country —and they were called upon to exempt Europeans by express words from the operation of an important Section, not because the particular Section would expose Europeans to any real or practical inconvenience, or because it would interfere with their possession or use of such arms as they might require for self-defence, or for any other purpose,—for nobody supposed that this would be the effect of the Section—but simply because the persons in whose favor the exemption was claimed were Europeans. He could not bring himself to consent to so invidious an exemption, and he did not think that it should have been asked for. On this point he agreed in much that had been said on a former occasion by the Right Honorable gentleman opposite, and in what had just fallen from the Honorable Member of Council on his left (Sir Bartle Frere.) The subject now under consideration naturally took them back to the legislation of 1857. No such exemption as that now claimed was then asked for when special reasons might possibly have existed, looking to the then state of the country, for granting it; but as he had already remarked, the Legislature of that day, after, no doubt, very full consideration, did not feel themselves justified in introducing words into the law which would have had the effect of absolutely exempting a parti ular class from its operation. Those who now advocated such exemption had made no attempt to show that the circumstances of the country had altered since 1857, so as to render that justifiable and prop r now which was not considered justifiable and proper then, and unless some good and sufficient reason could be shown for legislating in the year 1860 in a different spirit and on a different principle from what was followed in the legislation of 1857, he for one must regard the principle observed in that legislation as still binding upon the Council. But let them look at the difficulties into which they would be drawn if they adopted that part of the proposed Section which he was now considering. The exemption asked for was to be in favor not only of Europeans and Americans, but also of Eurasians. Now he willingly admitted that the Eurasians, as a class, were a highly respectable body of men. Some of the best servants of Government were persons of that class. But what was the case when they went low down in the scale. Did they not find men there of mixed blood who could have no more claim to any exemption under this Bill than the same class of natives? Many Eurasians were Mahomedans; and why was a Mahomedan-Eurasian to enjoy an exemption by express words from a general

law which they refused to give to a Mahomedan or Hindoo gentleman of pure Asiatic extraction? He did not think that they could consistently do so.

The only other remark which he would make on the part of the Section which he was now discussing was that he rejoiced to find that the classes who were chiefly interested in that part of the Section, had really suffered no injury in consequence of the Honorable and learned Judge on his left (Sir Mordaunt Wells) not having seen, at the time he addressed them on Saturday last, the reports of the Honorable the Lieutenant-Governor of the North-Western Provinces and of the Officers subordinate to him on Act XXVIII of 1857, to which he had so frequently referred in the course of the speech which they had to-day heard from the Honorable and learned Judge. When he (Mr. Harington) discovered that the Honorable and learned Vice-President and the Honorable and learned Judge on his left (Sir Mordaunt Wells) had not read those reports and were not indeed aware of their existence, he really feared that the cause which had been so warmly and heartily espoused and eloquently advocated by the Honorable and learned Judge, might have suffered from the omission of any mention of the Reports in question in the Report of the Select Committee on the Bill, which he regretted as much as any body could; but all who had heard the Honorable and learned Judge's speech that day must feel that the omission alluded to, so far from having been productive of injury to the European cause, had given the Honorable and learned Judge an opportunity of reiterating in even stronger language than he had first used the claims of that class to the exemption to which he considered them entitled, of which he had fully availed himself, and which he might not otherwise have enjoyed. Though the omission complained of could not be defended on that ground, it had really proved beneficial rather than injurious to the European community in the opportunity that had grown out of it of further discussing their title to exemption from a part of the present Bill.

Passing on to the first question, he observed that the Honorable and learned Judge on his left (Sir Mordaunt Wells) had distinctly told them at the commencement of the speech, which they had just heard from him, that he had read the whole of the papers connected with the Arms Bill which were sent to his house, including the statement of objects and reasons which he (Mr. Harington) circulated with the Bill after the first reading. That statement was lying before him, and he found in it the following remark:—

"The grounds upon which it is deemed desirable that the Act (meaning Act XXVIII of 1857) should be made perpetual are, that it is calculated materially to repress crimes attended with violence, and to contribute generally to the maintenance of the public peace."

The crimes alluded to were obviously social, not political crimes, and the public peace intended was clearly the peace of the district quoad such crimes, and not political offences; and yet within a few hours, after reading the statement containing the remarks which he had just quoted, the Honorable and learned Judge mentioned more than once, and the same observation had fallen from the Chair, that this Council had never been told that the present Bill was really a Police as well as a State Bill, and that it had always been treated as a Political Bill only. He (Mr. Harington) made this remark merely to show how little attention was paid to reports or statements prepared and circulated in accordance with the Standing Orders of the Council, and he believed that it was owing very much to this circumstance that those reports and statements had become so brief, and that, comparatively, so little trouble was taken in their preparation.

The Honorable and learned Judge had laid much stress upon the fact, that in the statement of objects and reasons circulated with the present Bill, he (Mr. Harington) had declared that, so far as he was aware, Act XXVIII of 1857 had worked well, that no modifications

had been proposed, and that none seemed to him to be called for, and he had contrasted this declaration with the important alterations in the Act which were now proposed by the Select Committee, of which he (Mr. Harington) was a Member. No doubt he (Mr. Harington) had made the declaration to which the Honorable and learned Judge had so pointedly alluded. At the time he expressed himself to the effect therein mentioned, he firmly believed that Act XXVIII of 1857 had worked well, and it was a fact that at that time no modifications of the law had been proposed to him from any quarter, nor had any alterations, which might be regarded as improvements, occurred to him; consequently all that he asked the Council to do, was to make Act XXVIII of 1857 perpetual. It was in the debate on the motion for the second reading of the Bill that objections were for the first time taken, so far as he (Mr. Harington) knew, to the manner in which Act XXVIII of 1857 had been carried out in some parts of the country. The first attack made upon the working of the Bill proceeded from the Honorable Member for Bengal. The Honorable Member read to them an extract from a newspaper published at Allahabad, in which it was stated "that the Act was made a pretext for the grossest cruelty and extortion, and that deeds were daily committed in the name of the British Government, which would be sufficient to render any Government detested—that it was scarcely necessary to add that these deeds were committed by native subordinates, and in violation, not in aid, of their duty—that it was one thing to take arms wherever they could be found, by the fair exercise of authority, but it was quite another thing to extort them by the most brutal means from the poor and inoffensive, and to allow the rich to retain them for the next opportunity that might arise for their use." The Honorable Member for Bengal added that he had heard from other sources that the general seizure of arms was attempted to be enforced by violence, which the law, as he understood, did not countenance. The late Honorable Member for Bombay, of whose death they must all have heard with regret, followed on the same side. He declared that

"he had heard, and from authority he could not question, that the powers created by the Bill had been grossly and cruelly exercised. It might be said that there was no chance of such misfeasance occurring again, but it might occur; and he thought that no Bill of this kind should be passed without containing stringent provisions to restrain such abuses."

At the time this discussion took place, he (Mr. Harington) had the honor of being a Member of the Executive Government, and he was able in that capacity to assure the Council, in reference to what had fallen from the Honorable Members for Bengal and Bombay, that there was no disposition on the part of the Government to screen its Officers who might be guilty of acts such as those complained of, and he mentioned that it was only a short time before that, on its coming to the notice of the Government that some degree of violence had been used to compel a party to deliver up arms supposed to be in his possession, a most severe reproof had been administered to all concerned. Subsequent enquiries, and particularly what he (Mr. Harington) heard from the Right Honorable gentleman opposite on his return from the Upper Provinces, led him to think that it was not desirable to continue in the new Bill the general power of searching for arms contained in Act XXVIII of 1857, and the Honorable Member for Bengal concurring with him, they proposed the omission of the Sections relating to the search of houses, but as they considered that some compensating Section would be necessary to render the Bill effectual, they prepared the Section requiring that no person should carry arms without a license, unless he was specially exempted, and proposing a penalty for any violation of this provision. He had now explained the circumstances under which his opinion as to Act XXVIII of 1857, as declared in the statement of objects and reasons which had been referred to by the Honorable and

learned Judge, had undergone a change since that statement was drawn up, and he hoped he had said enough to satisfy the Committee that there were some grounds for the modification of the views originally entertained by him. The Honorable and learned Judge complained of his (Mr. Harington's) acting upon private communications respecting legislative matters, which he thought no Member of this Council ought to receive, or at least that, when they did receive them, they ought not to be influenced by them; and he informed them what was his practice when any letters were addressed to him as a Judge of the Supreme Court regarding any matter pending judicially before the Court. The Honorable and learned Judge told them that he at once tore up such letters and threw them away He (Mr. Harington) thought the Honorable and learned Judge was quite right in thus treating communications of the nature of those to which he had just referred. In fact, he (Mr. Harington) must express great surprise that any person should dare privately to address the Honorable and learned Judge in respect to any matter pending in the Supreme Court. But surely there was all the difference in the world between letters addressed to the Honorble and learned Judge, as a Judge of the Supreme Court, trying to influence him in respect to some matter within his judicial cognizance, and letters addressed to Members of this Council, informing them how particular laws were working, suggesting alterations in the law, or proposing new laws, or giving information perfectly lawful and unobjectionable in its nature, and calculated materially to assist the Members of this Council in discharging their important duties. He could see no objection to any Honorable Member receiving communications of this kind. He did not deny that he carried on a very large correspondence with gentlemen in the North-Western Provinces on subjects connected with his office. He wrote freely to the Honorable the Lieutenant-Governor, both privately and officially, on such subjects, and he often had communications, both verbal and written, with native gentlemen, and he could truly say that he had derived most useful information in this way, which he hoped he had been able to turn to good account in his capacity of a Member of this Council. But, strange to say, while the Honorable and learned Judge complained of his (Mr. Harington's) receiving and acting upon private communications, he told them almost in the same breath that he had heard things outside of that Chamber which had satisfied him that the reports which had reached him (Mr. Harington) as to the working of Act XXVIII of 1857, were exaggerated or unfounded—was this, he would ask, altogether consistent?

The Honorable and learned Judge had made allusion in his speech to his (Mr. Harington's) limited powers or limited action in that Council. He would feel obliged if the Honorable and learned Judge would explain what he meant by that allusion, which he (Mr. Harington) found it difficult to understand.

SIR MORDAUNT WELLS said, his Honorable friend himself had propounded a theory regarding the powers of Legislative Councillors. What he (Sir Mordaunt Wells) had meant to say was that we were not here as journeymen conveyancers, or Bengallee clerks, ready to do any particular work requiring to be carried out.

MR. HARINGTON resumed. He begged to thank the Honorable and learned Judge for the explanation which he had been good enough to give of the remark which he had quoted from his speech, and to express his satisfaction that the Honorable and learned Judge did not intend to charge him with acting in this matter at variance with the views which he entertained at heart. The words used by the Honorable and learned Judge certainly seemed to imply that he (Mr. Harington) was acting under some external influence, under the pressure of some force from without, and not in accordance with his own convictions, and he was glad to be assured by the Honorable and learned Judge that this was not what

he meant. He (Mr. Harington) did not wish now to discuss the question as to the powers of the Members of this Council as regarded either originating laws or any other matter. He entertained no doubt whatever, and he expressed himself to that effect on a former occasion, that it was open to every Member of this Council to bring in any law he pleased, whether the law originated with himself, or whether it emanated from some other quarter. It was also beyond doubt that every Member was at liberty to vote just as he thought proper, and that it mattered not whether the measure on which he was called upon to give his vote was a Government measure, that was a measure introduced at the instance of the Executive Government, or not. In either case perfect freedom of action was left to every Member. But at the same time he must say there were some Bills which he thought ought not to be introduced into this Council by any Member without previous communication with the Executive Government who, after all, were responsible for the Government of the country. He regarded the Bill before the Council as in point Had that Bill been sent to him by the Government, which he had the honor to represent, for the purpose of being introduced into the Council, looking to its character, as he had formerly stated, he should certainly have considered it his duty to communicate with the Members of the Executive Government either in this Chamber or elsewhere, before moving the first reading of the Bill. This was of course a matter of opinion, and he might also say of discretion. Certainly he found nothing in the Act of Parliament which constituted this Legislature, repugnant to the views which he had just expressed. He might add that the Standing Orders made no provision for Bills being transmitted by the local Governments, which desired that they should be introduced, to the representative Members of such Governments. Those Orders required that the Bills should be sent to the Clerk of the Council, by whom they were reported to the Council at large, before any action could be taken upon them, and he was not sure that this was not also what was intended as regarded all communications from the local Governments to the Council, though there was undoubtedly a great convenience in direct communications between the local Governments and their representative Members, which he should be extremely sorry to see interfered with, or put a stop to. The Honorable and learned Judge seemed to be surprised that he (Mr. Harington), being the representative Member in this Council of the Government of the North-Western Provinces, should be expressing views in the Council on the Bill now under consideration, in opposition to the views of the Government which he represented, and other Officers of that Government; but though he must always respect every thing that emanated from the Honorable the Lieutenant-Governor of the North-Western Provinces, and he hoped he should always be found to show the utmost deference and respect, and to give the greatest consideration and attention to all suggestions and instructions that he might receive from the Lieutenant-Governor, he did not understand that he was in that Council to represent the individual views of the Lieutenant-Governor of the North-Western Provinces, or to advocate those views when they were opposed to his own. No doubt he received his appointment from the Government of the North-Western Provinces, but from the time that appointment was made, he became a Member of the Council of the Governor-General of India for the purpose of making laws, not for the North-Western Provinces alone, but for all India; and his duty was to consider the interests of all India, not of any particular part of it, though the quarter which he represented must be considered to have special claims upon him, which he hoped he should always be found ready to acknowledge. He believed he had rightly described the position of a representative Member of this Council. This brought him to the reports received from the Honorable

the Lieutenant-Governor of the North-Western Provinces in the Bill before the Council. Those reports had been remarked upon by the Honorable Members for Madras and Bengal. It was not his intention to go into them in detail. But he must say that two things in those reports had caused him considerable surprise. The first was the opinion which had been expressed as to the inadequacy of Act XXVIII of 1857 to effect the object which the Legislature had in view when it passed that Act. The second was the opinion expressed by some Officers, that the North-Western Provinces had not as yet been half disarmed. He would ask Honorable Members carefully to study Act XXVIII of 1857, to consider that, at the time that Act was passed, there was certainly no disposition to pass a mild law, or a law that would be found powerless to accomplish the object aimed at, but just the contrary; to recollect that, in passing Act XXVIII of 1857, the Council had the aid of the Honorable and learned Chairman; and then to say whether a more stringent law could properly be passed by the Council. No doubt it might appear a bold thing for him, sitting in that room, to express a doubt as to the accuracy of the belief entertained by Officers on the spot in respect to the extent to which the disarming of the population in the North-Western Provinces had been carried out under Act XXVIII of 1857. Had the opinions to which he had referred been based upon facts, he did not think that he should have ventured to question their correctness. But this was not the case. It was assumed that, wherever there was a certain amount of male adults, there must be a certain number of lethal weapons, and if that number was not produced, it was held, without further proof, that the place had not been disarmed. It certainly appeared to him (Mr. Harington) that this might prove a very unsafe test, and that it was not a criterion which this Council could accept as the basis of more stringent legislation. Looking to the vigorous manner in which the search for arms had been carried on under the orders of the Honorable the Lieutenant-Governor of the North-Western Provinces, who had taken a deep interest in the matter, feeling the importance of the work and the advantages which might be expected to result socially and politically from its successful prosecution, and looking, moreover, to the fact, that not only had all the stringent provisions of Act XXVIII of 1857 been called into operation for the purpose of carrying out effectually the provisions of that Act, but that, as seemed to be admitted by one Magistrate at least, Mr. Mayne, much more had been done than was warranted by law, he (Mr. Harington) could not help thinking that the Officers of the North-Western Provinces had not done themselves justice in reporting that comparatively so little had been done and that so much yet remained to be effected in the way of disarming the population of the country to which their remarks applied.

SIR MORDAUNT WELLS said that, as the Honorable Member for the North-Western Provinces had stated that those Provinces had been disarmed, he (Sir Mordaunt Wells) would read as follows what Mr. Ross, the Officiating Commissioner of Agra, had said on the subject :—

> "It has been found most difficult in all parts of the North-Western Provinces, even with the severe penalties attached to the proved concealment of arms, to induce the people to surrender their arms; and in many parts of every district it may be inferred with certainty, from the small number of arms surrendered, that the inhabitants have successfully concealed a large portion of their arms, and yet until such concealed arms are discovered, no punishment can be awarded."

The consideration of the Section was then postponed till to-morrow; the consideration of the remainder of the Bill being resumed after the consideration of the Income Tax Bill.

The Council then resumed its sitting.

The Council adjourned at 10 o'clock, on the Motion of Sir Bartle Frere, till to-morrow morning, at 7 o'clock.

Thursday Morning, July 5, 1860.

PRESENT:

H B. Harington, Esq.
and
H. Forbes, Esq.

No other Member of the Council was this day present.

Saturday, July 7, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A Sconce, Esq.,
H. B. Harington, Esq.,	and Hon'ble Sir M. L. Wells.

KOONCH AND CALPEE.

THE VICE-PRESIDENT read a message, informing the Legislative Council that the Governor-General had assented to the Bill "to remove the Pergunnahs of Koonch and Calpee in Zillah Jaloun, from the operation of the General Regulations."

INDEMNITY.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances."

DEBTORS AND CREDITORS.

SIR MORDAUNT WELLS moved the first reading of a Bill "for facilitating arrangements between debtors and creditors."

He said, the principal object of the Bill was to enable debtors and creditors, under the sanction of the Insolvent Commissioner, to make arrangements without being driven through the Insolvent Court, which of necessity led to an exposure of their affairs, and often deprived them of the means of assisting themselves, after having been relieved from their temporary difficulties. He had therefore prepared for the consideration of the Council a Bill for the purpose of enabling a debtor and his creditors to manage and settle the affairs of the former without his becoming amenable to the Insolvent Law. Before he explained the provisions contained in this Bill, he trusted the Council would permit him briefly to state the reasons which had induced him to bring in this Bill. He had watched closely the working of the Insolvent Law in this country, and he could say with great confidence that, in many cases that had come before him as Insolvent Commissioner, persons had been compelled to pass through the Court under circumstances which caused him to feel considerable regret that they should have been compelled to seek the only protection the law afforded. He believed the provisions of this Bill would be a great boon to the Native community. He had, on several occasions, been instrumental in bringing about an amicable arrangement between Native debtors and their creditors. In a recent case that came before him, in which the debts amounted to many thousands of Rupees, it was suggested to him that several members of the family of the debtor were prepared to assist him out of his difficulties. Obstacles at first existed, on account of the combined obstinacy and greediness of two or three of his creditors. He succeeded at last in bringing about a settlement. The Native community did not like to have their family affairs exposed, and to avoid this, would make great sacrifices in assisting their relations when involved in pecuniary difficulties. He believed the Bill would be highly beneficial and advantageous to the European Commercial Community. He had had two or three cases before him as Insolvent Commissioner, in which European gentlemen would certainly have availed themselves of the provisions of the present Bill to obtain an amicable adjustment of their affairs. He was satisfied the Bill he now asked

the Council to read a first time would materially strengthen the hands of the Insolvent Commissioner in facilitating arrangements between debtors and creditors.

He would now explain the provisions of the Bill. Any person, with the concurrence of two-thirds in number and value of his creditors, might present a petition to the Insolvent Court, which was to contain a full explanation of his affairs and also a statement that he was unable to meet his engagements, and also such proposal as he was able to make for the future payment of his debts, and if two-thirds in number and value of his creditors assented to the proposal, the petitioner would be entitled to ask that it should be carried into effect under the control of the Court, and to be in the mean time protected from arrest. The Commissioner would be empowered, after the presentation of the petition, to examine privately into the matter, and if satisfied with the debtor's explanation of his affairs, he might call a meeting of the creditors. At the first meeting of the creditors, the consent of the major part in number and value, or nine-tenths in value, or nine-tenths in number, whose debts exceeded 200 Rupees, was required to the proposal of the petitioning debtor, and if obtained, a second meeting was to be appointed; and if at such meeting three-fifths in number and value of the creditors *present*, or nine-tenths in value, or nine-tenths in number, whose debts respectively exceeded 200 Rupees, accepted the arrangements previously assented to, the terms were to be reduced into writing and signed, and the written agreement was to be binding on all the creditors, who should have received notice of the different meetings. The agreement would require the confirmation of the Commissioner. He wished it to be distinctly understood that at any stage of the enquiry parties might be represented by Counsel. After the agreement was filed, the property of the debtor was to vest in his trustee or trustees (if appointed). The Commissioner would, as soon as convenient to all parties, call a special meeting of the creditors, and if satisfied with the whole proceedings, would be empowered to give the petitioner a certificate, which was to operate as fully as a final discharge under the Insolvent Act in releasing him from all debts.

He might remind the Council that the Bill now before them was similar in its provisions to the 7th and 8th Vic. c 70, and which had worked well in England. The Attorney General, Sir Richard Bethell, had recently stated in the House of Commons, on the occasion of his introducing the new Bankruptcy and Insolvency Bill, that he wished to extend the provisions of the 7th and 8th Vic. c. 70 to all persons. He would read to the Council an extract from his speech, which clearly showed that the objects of the Bill now before the Council would be advantageous to the Indian Community. The Attorney General said:—

"There is another advantage which will attend the plan established by this Bill. An honest debtor might desire to make a disclosure of his affairs, with the view of making some arrangement and preventing the necessity of bankruptcy. But the very disclosure puts him in the power of some particular creditor or some individual who wishes to pursue perhaps a private end of his own, and who opposes an obstacle in the way of completing an effective arrangement, by prosecuting adjudication in bankruptcy. I hope to provide a mode of relieving persons in the situation from the embarrassment I have referred to."

He would also call the attention of the Council to the following passage from the Attorney General's speech:—

"We are all aware that a great stigma attaches to the name of the bankrupt. Accordingly a most natural wish exists on the part of the honest man to avoid the reproach of bankruptcy. As I have already said, there is great difficulty in gratifying such a wish, because the moment he exposes his affairs he lays himself open to adverse proceedings."

Before this Bill could be considered in detail, in all probability the new Bankruptcy and Insolvency Act would reach this country, and the Council would then have an opportunity of re-casting the Bill he had introduced. And he wished in conclusion, to state that, although he should not

have the honor of a seat in this Council when this Bill would have to be considered in detail, he would have great pleasure in rendering to the Council such assistance as they might require from him as Insolvent Commissioner.

The Bill was read a first time.

ARMS AND AMMUNITION.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)," the Council resolved itself into a Committee for the further consideration of the Bill.

THE CHAIRMAN read the Section which was under discussion when the consideration of this Bill was last adjourned, and which proposed to empower the Executive Government by proclamation to order any district to be disarmed.

MR. WILSON said, that, as on the whole, he preferred this Clause to the amendment which he had himself proposed, he was prepared to accept its general provisions. He thought it quite necessary that the Government of India should be armed with authority, not only to proclaim such a law in any district where it might be necessary, but also to extend, where necessary, the most stringent powers conferred by the Act of 1857. Unless the present Bill contained provisions to that effect, it would certainly fall short of the object for which it was intended, as the Clause would apply to an exceptional state of the country, and would be extended by proclamation. He apprehended there could be no difference of opinion that the law should be as stringent as possible, more especially as it would be put in force only in the last emergency. There were a few minor matters to which he wished to call the attention of his Honorable and learned friend in the chair. The power to issue such a proclamation should, he thought, be exercised by the Governor-General in Council alone. It was a power that would not be suddenly exercised, and would only be required in cases of very great emergency. He therefore did not think it advisable to give so large a power to the local Governments, and that it should be exercised by nothing short of the authority of the Supreme Government which, for all practical purposes, was quite sufficient.

There were a few minor points in the Clause, on the principle of which we were all agreed, and in respect of which therefore there would be no difficulty. The only main difference which now existed was with regard to the question which they had been for some days discussing, and which formed the concluding sentence of the Section now under consideration. The question was, should we or should we not exempt Europeans, Americans, and Eurasians? Now he apprehended there was not a Member of this Council, nor a Member of the European community, who would maintain that it was wise, just, or politically necessary that Europeans should claim exemption under such circumstances as he would presently put before them. He would in the first place ask, if it were necessary to exempt Europeans, because they took no part in the late rebellion, was it not necessary that we should equally exempt all loyal subjects. The Honorable and learned Judge (Sir Mordaunt Wells) had drawn a picture, in which he (Mr. Wilson) entirely concurred, showing the disgrace to which Europeans would be subjected if they were indiscriminately to be mixed up with those who had notoriously broken the law. He (Mr. Wilson) thought that nothing would produce a worse effect. But he would ask, were there not many loyal Natives among the disloyal, and were there not many well affected Natives among the disaffected. If the effect described by the Honorable and learned Judge would be produced by making the law applicable to loyal Europeans, what would be its effect if applied to loyal natives, who had run far greater risk of danger than the Europeans in remaining loyal? He did not for a moment disagree with his

Honorable and learned friends, that Europeans, Americans, and Eurasians ought to be exempted, but the difficulty was in making the distinction. If we made any exemptions, we ought to extend them to all loyal subjects of the Queen, and not endeavor to discriminate between this class and that class, and between this race and that race, a discrimination which it would be impossible to carry out in practice.

The Honorable and learned Judge (Sir Mordaunt Wells) had said that he had found a rock to stand upon, and that was the reports of the Lieutenant-Governor and the Officers of the North-Western Provinces, in which they expressed their opinion that Europeans ought to be exempted. But if his Honorable and learned friend had that confidence in those Officers, he (Mr. Wilson) would ask if it would not be better to avoid the danger of making the Bill unpopular for the reasons he had given, and leave the power to the discretion of those Officers, who would be the most competent Judges to decide who were or who were not loyal subjects. He, therefore, proposed to move as an amendment the substitution of the following words for the last sentence of the Section proposed by the Honorable and learned Chairman :—

"The provisions of this Section shall not extend to any person or persons exempted by the authority of the Governor-General in Council or of the local Government of the proclaimed district, or by any European Officer serving in such district duly authorized by the local Government in that behalf."

So that every European Officer carrying out the provisions of that Section in every district, no matter how small, would then have an opportunity of judging whether certain persons were to be exempted or not. He (Mr. Wilson) believed that that would be a very necessary provision under a law of this kind. His Honorable and learned friend had said that he would not, on any account, ask for a discrimination of this kind, unless it was actually necessary. As a general rule, however, he thought that we should not make any distinction in legislation. Instead of excluding one class and not another, would it not be better to include all classes, and leave it to the Government to exempt such of them, (without giving any general designation,) as they might consider fit to be trusted with the use of arms without danger to the public safety? He would ask the Honorable and learned Judge whether it would not be better to confide in those Officers whom he had called a rock. He quite agreed with the Honorable and learned Judge that it would be very unjust and cruel to deprive Europeans of their weapons of defence. He (Mr. Wilson) thought, that to disarm the loyal subjects of the Government would be to weaken the executive power, and no one felt more strongly than he did that, to disarm such subjects, would be an act of madness on the part of any Government, and was calculated to disable the executive power and to stop its action completely. In such an emergency the Government would avail itself of the assistance of any class, without distinction of color, creed, or caste. The Act of 1857 had been in operation for two years in the North-Western Provinces, and when proclaimed, there was no exemption made in favor of Europeans, as had been done in the other places to which it was extended. He knew of no single instance of a European having been molested in any way, or of any inconvenience having arisen by his not being exempted. He would therefore ask them to consider how much more safe it would be if every one of those Officers had the power to exempt every loyal subject. We had been asked whether, in making the Europeans subject to the provisions of the Bill, we intended to place a ban on them. Surely he need not ask if any European believed such a thing. If we had fellow-subjects, subjects of the same law, and subjects of the same Crown, should we place a ban on them by exempting classes which were no more entitled to exemption than we were? If it were proposed to place any special ban on Europeans, he (Mr. Wilson)

for one should have resisted to the last. But this was a different measure now before the Council. We were asked to pass a law for the good order and peace of the country, not applying particularly to disloyal natives, but to prevent the indiscreet man, whether he be a native or European, from making an improper use of arms. His (Mr. Wilson's) great desire was to see the Bill framed in accordance with the spirit of legislation; whereas, by the mode in which it was attempted to carry out the measure, it was proposed to declare that Europeans alone should be exempted, and not loyal Natives. He would not now enter into any argument as to where the Eurasian began, or the exact quantity of Native blood required to constitute it. These were minute questions which it was not easy to solve, and the solution of which would go far towards affecting a particular class of Europeans. But the real question was, whether we could exempt one class of the loyal subjects of Her Majesty without placing a ban on the others. He thought that we should make provision that all the loyal subjects of Her Majesty should have protection in cases of emergency; and it appeared to him that a Clause of the nature proposed by him would afford such protection to every one, be he European, Eurasian, American, or Native.

SIR MORDAUNT WELLS said, he would draw attention to what Mr. Mayne the Magistrate of Banda had said on this subject. He said:—

"Then again it cannot possibly be the intention of Government to disarm European British subjects. I think, therefore, it would be more honest and at the same time more dignified to declare the truth. It is not only useless but most injudicious to irritate the English settlers by even nominally including them in such an Act. The time is past for placing no distinction between the European settlers and the natives of the country. The latter have caused the breach, and let them take the consequences."

MR. WILSON said, we were not bound by Mr. Mayne's ideas of dignity. He (Mr. Wilson) thought it would be more dignified for the Legislature to exempt all loyal subjects. He had no doubt that, if the power were to be given to Mr. Mayne of exempting all whom he considered loyal, he would exercise it with great discrimination. He (Mr. Wilson) would be very glad if his Honorable and learned friend would propose the insertion of such words as might be necessary to make his amendment more effective.

SIR MORDAUNT WELLS said, he fully agreed that all loyal subjects should be exempted. But in dealing with any question, it was our duty to look at the ascertained facts. What was the first ascertained fact? All Europeans were loyal, and therefore had a right to be exempted as a class. The other was not an ascertained fact, for some Natives were loyal and others not so. There was great difficulty in exempting them as a class, a difficulty which did not exist with regard to Europeans. Should we exclude an ascertained loyal class on account of our inability to include an unascertained class? We knew that all Europeans were loyal, and let us have the boldness to exempt them, leaving it to the Commissioners to exempt such natives as they might consider loyal.

MR. HARINGTON suggested that the Section proposed by the Honorable and learned Chairman should be broken up into two or more Clauses, and that each Clause should be considered separately.

THE CHAIRMAN said, he had no objection, though he would not bind himself to vote for the third reading of the Bill, unless his Section was carried in its entirety.

The question was then proposed that the following Clause stand part of the Section:—

"It shall be lawful for the Governor-General in Council, or for the Executive Government of any Presidency, or for any Lieutenant-Governor, or with the sanction of the Governor-General in Council for the Chief Commissioner or Commissioner of any Province, district or place, subject to their administration respectively, whenever it shall appear necessary for the public safety, to order that any district or place shall be disarmed."

SIR BARTLE FRERE proposed the insertion of the words "with the

sanction of the Governor-General in Council" before the words "for the Executive Government, &c," so as to make them apply to all Governments and administrations. The power of proclaiming a district was one which he regarded as so important, that he would not propose to allow its exercise by any Government without the express and direct sanction of the Government of India in each case.

THE CHAIRMAN said, it did not appear to him to be necessary that the sanction of the Governor-General in Council should be obtained. The Honorable Member of Government had stated that his great object in putting the amendment was that nothing should be done under the power proposed to be given without the greatest deliberation. He believed that the Governments of Madras and Bombay were competent to act in such a matter without applying for the sanction of the Governor-General in Council, and that they never would act hastily or without deliberation in such a matter. If they exercised the power improperly or without due deliberation, the Governor-General in Council could revoke their order. But the question was, whether we should restrain them in the exercise of such a power. He apprehended that such a restriction as this might produce much inconvenience. He remembered the time when the Supreme Government was prevented for some time, during the late rebellion, from having any communication with the Lieutenant-Governor of the North-Western Provinces or with the Chief Commissioner of the Punjab. This might occur again, in which case the local Governments would be compelled, by such a provision as this, either to refrain from disarming or to do so illegally. The Governors of Madras and Bombay had armies at their command. Might we not trust them with the power of ordering a district to be disarmed without first applying for the sanction of the Governor-General in Council? The Act of Parliament gave these Governments the whole Civil and Military administration of their several Presidencies. Should we curtail those powers? By passing the proposed amendment, it appeared to him (the Chairman) that we should be throwing an impediment in the way of their free action, and he saw nothing on the part of those Governments to induce the Council to distrust them.

SIR MORDAUNT WELLS said that, under the Act of 1857, the local Government had the power of proclaiming a district, and no reason had been given for the change. He did not know that anything had since happened to induce the Council to withdraw the power. He had full confidence in the Lieutenant-Governor and the Officers in the North-Western Provinces, and he was so fully impressed with the belief that they were quite competent to act if any emergency or danger arose, that, so far from diminishing their power, he would increase it. He would ask the Honorable Member for Madras whether he had confidence in the fitness of his own Government to be entrusted with this power, and what they would say to being obliged to wait until the sanction of the Governor-General in Council was received, before they could act in such a matter. By adopting the amendment we might cramp their powers in a case that might be of the greatest necessity.

MR. FORBES said that, as the Honorable and learned Judge had called upon him to state what his view of the matter was, he had no hesitation in saying that it was entirely the same with the view expressed by the Honorable and learned Judge and the Honorable and learned Chairman. The Right Honorable gentlemen opposite had stated to-day that this was not a power which a local Government would be called upon to exercise suddenly. But he (Mr. Forbes) thought that a sudden necessity might arise. There was no very long warning given of the mutiny of 1857, and it was impossible for any man to say that a similar and as sudden an emergency would never arise again. During the rainy season the dâk from Madras to Calcutta took fourteen days to travel, and very great

mischief might be done if, during the whole interval between sending an application to Calcutta, and the receipt of a reply, the local Government were unable to take any step towards disarming a District on any crisis arising. It was true that the Electric Telegraph was open, but every body knew how easily the communication might be cut off or otherwise interrupted, and after all, although a few words might be conveniently and intelligibly sent by Telegraph, all the political reasons that might weigh with a local Government in inducing them to wish to disarm a District, could not be condensed in a Telegraphic message. If the sanction of the Government of India were to be given on a mere brief Telegraphic request for it without a full explanation of the grounds of the request, the real responsibility of the disarming would rest with the local Government, and if it was to rest with them in reality, he thought it best that it should rest with them by law.

MR. HARINGTON said, it was scarcely necessary for him to remark that he concurred in the opinions expressed by the Honorable and learned Vice-President, the Honorable and learned Judge on his right (Sir Mordaunt Wells), and the Honorable Member for Madras on the question now under discussion. A Section similar to that which had been read from the chair, giving power to the Executive Government to order the disarmament of any district or place under such Government, had been framed and circulated by him (Mr. Harington), and was in accordance with the opinions to which he had just referred.

SIR BARTLE FRERE said, no one went farther than he did in desiring to see the largest possible measure of independence accorded to each of the Governments under the Government of India. He (Sir Bartle Frere) heartily wished that the administrative powers of the local Governments could be enlarged—and that each of them possessed some portion of the legislative power which the law now entrusted solely to this Council; but as matters stood, it was requisite to look to the extent of the power to be exercised and to the duty of the Legislative Council in determining in what hands that power should be vested.

The Council was continually informed that it was not competent to them to delegate their powers to local Governments with regard to the smallest municipal matters. He (Sir Bartle Frere) did not agree in this view, but he could not see how the Council could consistently commit to local administrations a power, the exercise of what was of much greater importance to the happiness of the people than the most important municipal regulations. He (Sir Bartle Frere) looked on this power of proclaiming a district and making a search, house by house, for arms, as one of the most important which could be exercised in this country. He did not in the least mistrust the local Governments. He believed they would generally exercise their power with the utmost justice and circumspection, but he wished that, in exercising it, they should always be reminded that it involved a responsibility for which they were bound to give a very strict account to the Government of India.

This power of proclaiming a district was not one which it could ever be necessary to exercise suddenly. The process of disarming must be a tedious one. The papers before the Council stated that two years had been insufficient to disarm the North-Western Provinces, and the necessity for resorting to disarming proclamations could never arise suddenly, like the necessity for proclaiming martial law, or for taking any other steps which might be requisite to quell a sudden outbreak. His Honorable and learned friend had referred to the isolation of the North-West and the Punjab during the outbreak in 1857; but he (Sir Bartle Frere) need not remind the Council that in such cases it matters very little what might be the legal powers of your distant Officers. The legal powers of the Chief Commissioner of the Punjab were comparatively limited, but that did not prevent his doing every thing that was necessary, when he found himself cut off from the Supreme

Government Looking as he (Sir Bartle Frere) did on this power of proclaiming a district as greater and more important than almost any administrative power, except that of making peace and war, he did not think it was one that should be exercised at discretion by every local Government and administration without the sanction of the Government of India.

THE CHAIRMAN said that the Honorable Member of Council (Sir Bartle Frere) was under some misapprehension in saying that we had refused to give local Governments the power to legislate for Municipal purposes. The reason why we refused to give them that power was that we could not do so. The Act of Parliament did not allow this Council to delegate any of its powers to any Government. The local Governments already had the Civil and Military administration entirely in their hands. The Government of India had merely a controlling power over all. If the Governor-General in Council found that those powers were exercised improperly, he could restrain them. But the question now was, should we by this Act restrain them from acting without the previous sanction of the Governor-General in Council in a matter which might be necessary for the peace of the country when Parliament had trusted them with the Government? By doing so, we should be casting upon them a reproach which they had not deserved. The Government of Bombay in particular had acted with the greatest decision and energy during the mutinies.

MR WILSON said, the only reason why he had proposed that the sanction of the Governor-General in Council should be applied for was that full security should be given to the public that no improper use should be made of the great powers which this Bill conferred. However, if the representatives of the public in the several Presidencies saw no objections to these powers being conferred on their Governments, he should not insist upon the safe-guard being given to those who did not want it.

MR. HARINGTON said, in reference to the last remark of the Right Honorable gentleman, that he was not aware of any reason why the Lieutenant-Governor of the North-Western Provinces should not have the power proposed to be given to him, but the contrary. He felt certain that the public had full confidence in the present Lieutenant-Governor of those Provinces, and he could not doubt that the same confidence would be entertained in any future holder of the office.

MR. SCONCE said, the Governor-General in Council would lose all control over the subordinate Governments in such a matter as the disarming of districts, if a Clause were enacted without its providing for that control.

MR. FORBES said that the Governor-General in Council had that control by Act of Parliament, and that we could not take away that power from him without over-riding the Act of Parliament—a power which this Legislative Council did not possess. He therefore thought the words unnecessary.

THE CHAIRMAN said, the words were not only unnecessary but improper.

SIR BARTLE FRERE'S Motion being then put,

The Council divided as follows—

Ayes 3.	*Noes* 4.
Mr. Sconce,	Sir Mordaunt Wells
Mr. Wilson,	Mr. Forbes,
Sir Bartle Frere.	Mr. Harington,
	The Chairman.

So the amendment was negatived, and the Clause was then put and agreed to.

The question was then put that the following Clause stand as Clause 2 of the Section:—

"In every such district or place, as well as in any district or place in which an order for a general search for arms has been issued and is still in operation under Act XXVIII of 1857, it shall not be lawful for any person to have in his possession any arms mentioned in Section V of this Act, or any percussion caps, sulphur, gunpowder, or other ammunition, without a license from the Magistrate or Chief Officer charged with the preservation of the peace of the district."

MR. HARINGTON said, it seemed to him that, if they passed this Clause

of the Section, and declared absolutely that the mere possession of arms, without a license, in those districts to which Act XXVIII of 1857, or only the 24th Section of that Act had been extended, was a high penal offence, and that the severe penalties proposed by the Section might be inflicted on every man or woman or even child of a certain age within those districts, in whose possession, which would extend to the whole of the premises upon which they resided, a single gun, sword or spear might be found, though kept only for defence against robbers or wild beasts, they would be going counter to the intentions of the Council in the Sections which had already been settled and would be over-riding those Sections. There appeared no sufficient reason for passing a severer law now than was passed in 1857, when the circumstances of the country were so different from what they were at the present time. He would consider the proposed Clause in its bearing upon the Provinces which he had the honor to represent in that Council, for it would be those Provinces which would be chiefly affected by the Clause. And why, he would ask, were the North-Western Provinces particularly to be singled out at this time and made the subject of special penal legislation. Had particular portions of the North-Western Provinces been selected after the passing of Act XXVIII of 1857, and had the Act been extended to those parts only, because they had been conspicuous for rebellion, the case would be different, but the Act had been put in force in places where there had been no rebellion. The Honorable and learned Judge on his left (Sir Mordaunt Wells) had told them on a former occasion that, from the first, what had taken place in 1857 had been something more than a military mutiny. He (Mr. Harington) did not know what means of information the Honorable and learned Judge possessed, but he had no hesitation in saying that, had there been no mutiny in the Native Army of Bengal, there would have been no rebellion in any part of the North-Western Provinces. Whatever of rebellion there was in those Provinces grew out of the mutiny. The agricultural classes, the merchants, and traders, and the respectable inhabitants of the towns and cities continued for the most part at their usual avocations, and, outwardly at least, remained loyal to the Government, so long as the Government was in a position to protect them or until the civil power was at an end and until it seemed doubtful whether British rule would ever be re-established; and they returned to their occupations immediately on the re-instatement of our authority, and had continued steady and firm in their allegiance to the Government ever since. Intermediately, no doubt, or while the civil power was suspended, acts of violence were committed, but in most cases they were directed against one another, rather than against the Government, and arose out of feuds which, under our rule, had lain dormant for many years. He was not pleading the cause of the sepoys—of those miscreants, who, by their cruel, treacherous, dastardly deeds and base ingratitude to the State, by which they had been so well treated, had rendered the very name of sepoy hateful in their ears. They had had their reward, and richly did they deserve all that had befallen them. He was not pleading the cause of the convicts who had escaped from jail during the outbreak. Let them be apprehended and punished with all the severity of which the law admitted. He was not pleading the cause of the *budmashes* or bad characters, by whom most of the excesses, during what might be called the civil rebellion, were committed. These men were no proper objects of mercy. Let them be dealt with according to law, and if the laws were not stringent enough for their punishment, let them be made more stringent. But he desired to appeal to the Council on behalf of the agricultural classes, of the mercantile and trading classes, and of the well-disposed classes generally, who were the chief sufferers by enactments of the nature of the law under consideration, and he would ask the

Council whether, without the commission of some new offence, or the occurrence of some new circumstances calling for greater severity, it would be just to bring all these classes under a special provision, which was intended to have prospective effect only in other places, and to be enforced there only when the Executive Government considered its enforcement necessary for the public safety. He merely asked that the North-Western Provinces should be placed on the same footing as the rest of India; that the provision contained in the Clause, which they were now considering, should not at once become law, as of course, in the North-Western Provinces, but that its introduction should be left in the discretion of the Honorable the Lieutenant-Governor, as was proposed to be done elsewhere. If hereafter the inhabitants of any district, by their conduct, brought upon themselves the provisions contained in the Clause of the Section which they had just passed, it would be their own fault. He considered it only fair that the opportunity of remaining exempt from its operation should at least be allowed them, and that they should not be treated differently from the rest of India, because circumstances had occurred which were beyond their control. This was all that he asked for. Admitting that the classes to which he was alluding did not do all for the Government during the eventful period of 1857 that they might have done, the very difficult position in which they were placed should not be overlooked. Unable to obtain any aid from the local authorities, they were at the mercy of the sepoys, and bad characters, by whom the country was overrun. The instances were very few, in which Englishmen, much less Englishwomen, met with violence at the hands of these classes, while the cases were numerous in which, but for them, many of our countrymen and countrywomen must have perished, and what had been their conduct since—had they not been quiet, peaceful, and orderly subjects?—had they not been obedient to the laws of the country?—and had not those who were landholders continued to pay their revenues with the same punctuality with which they paid them before the mutiny? If this was the case, ought not this Council, in the spirit of Her Majesty's proclamation, to throw a veil over the past, and to let by-gones be by-gones. Ought they not to be satisfied with what had been done in the way of punishment, and, having regard to the Bill before them, to be satisfied also with what had been done in the way of disarming the country by means of searching for arms, and to look for the diminution of the number of arms still remaining in the hands of the people, and for the gradual abandonment of the practice of carrying arms, to those means, which they had been informed by the Honorable Member of Council on his left (Sir Bartle Frere), —as the result of his own experience—had been so successful in Sind, and in the Punjab also. The population of those places was just as warlike as the population of the North-Western Provinces, and even more so. And here he (Mr. Harington) must express his regret that they had struck out the Section which proposed to charge licenses for carrying arms with a fee of one Rupee. Had that charge been retained, he really believed that the effect would have been rapidly to reduce the quantity of arms in common use. Most Natives would have thought twice before they expended a rupee on a license, allowing them to carry arms, and they all knew that arms put away and disused soon became so rust eaten and otherwise injured as to be useless. This would very shortly be the case with the arms which were stated to have been buried in the earth, or hid in wells or concealed in the branches, or on the tops of trees. The Honorable and learned Vice-President had observed more than once that, if the Natives were allowed to take back their arms, all that had been done towards disarming the population of the North-Western Provinces would go for nothing; but there was no intention of returning the arms that had been taken. The greater part had probably been destroyed. Politically, he

must say, that he did not think any danger was to be apprehended to the Government from the possession by the Natives of any number of the ordinary matchlocks, swords, and spears of the country. As he had before observed, a few European Riflemen would disperse a whole district armed with such weapons. It was chiefly for police purposes that it was desirable to get these kinds of arms out of the hands of the people. The operation of the other Sections of the Bill must be looked to in order to prevent danger to the State from the possession of arms and ammunition.

It appeared to him (Mr. Harington) that, if it was intended to render the Clause of the Section under consideration really effectual, and not to allow it to become a dead letter, the constant search for arms must of necessity be continued, and they had the assurance of the Right Honorable gentleman opposite, based on information, which was obtained by him on the spot from Officers holding high appointments, that this search for arms had led to very great oppression. He would read to the Council what the Right Honorable gentleman had said on the subject, and he begged Honorable Members to bear in mind that it was the Right Honorable gentleman and not he (Mr. Harington) who was speaking. [Mr. Harington here read the extract from Mr. Wilson's speech, to which he had alluded.] He went on to say that when the Honorable Members for Bengal and Bombay complained of the manner in which the search for arms had been conducted under the present Act, he thought that they had been misinformed, or that the accounts which they had received were exaggerated, and it was not until these accounts were confirmed by what he heard from the Right Honorable gentleman and others, that he was led to propose the discontinuance of the search for arms, except in special cases, and the substitution of a different mode for carrying out the law. It had been suggested that the change which had taken place in his views since he introduced the present Bill, had arisen from the receipt of private communications, and though he did not recollect the Honorable and learned Judge to have used the word Native, he found it reported that these communications were supposed to have been received from Natives. But this was not the fact. He had not had a line from any Native on the subject of the Bill. In all he did not remember to have received more than four private letters, in which any mention was made of the Bill. Three of these letters were from Mr. Gubbins, a Judge of the Sudder Court, and were confined to pointing out ambiguities in the wording of the present Act, which he suggested it would be as well to clear up in any new law that might be passed. The fourth letter was from a Military Officer, who had never written to him before on public matters. He referred to the sullen look of the people, and seemed to think that they had some ground to complain of the manner in which the search for arms was being conducted by the native police. He mentioned two instances, one of a retired Subadar, who, after surrendering his sword to his Commanding Officer in 1857, had been compelled to pay two Rupees to the police in default of giving up his sword to them, and two Rupees more because he could not give up his son's sword, the son never having possessed such a weapon. The second instance was that of several ryots who had been made to pay a sum of money each under similar circumstances. This letter, which was dated 21st June, was received after the report of the Select Committee on the Bill before the Committee was presented and it could not therefore have influenced that report. [Mr. Harington here read an extract from the letter.] He went on to say, that he had now put the Committee in possession of the whole of the written communications which had been addressed to him privately on the subject of the Bill. But he had heard the Bill discussed over and over again by Officers, many of whom were from the North-Western Provinces, and the result had been the conviction upon his mind that, if the search for arms could be dispensed with, it would be

a great relief to the country, and would remove much of the discontent which they were informed had arisen from the operation of that part of the present law, which authorized a general search for arms. But as he had already said, if they passed the Clause of the Section now under consideration, they must keep up the system of search, otherwise the Clause would be inoperative, and it being impossible throughout the North-Western Provinces to employ European agency for the purpose, Native agency must still be resorted to from necessity, and by employing agency of that description, they ran the risk of a repetition of the scenes which were described in the letter from the Magistrate of Furruckabad, whose communication had been specially referred to by the Honorable and learned Judge on his left (Sir Mordaunt Wells), in these words :— "Now the lash, confinement, constant inquisition, worm out the hidden treasure, as the screw draws forth the tight cork. I know full well," the Magistrate goes on to say, "that this district and the city of Furruckabad are but half disarmed, and until I pass through every village, and use very harsh measures, not a weapon will be given up." He (Mr. Harington) would save the country from these measures, which were not authorized by law, and which he thought could only produce a feeling very different from that contemplated by Her Majesty in that part of Her gracious proclamation, in which Her Majesty justly declared that, in the contentment of her subjects was her security. For these reasons he should be glad to see the Clause in question omitted. The Honorable the Lieutenant-Governor would still be at liberty to act under the Clause which had just been passed, whenever the public safety appeared to him to render recourse to the provision contained in that Section necessary.

SIR MORDAUNT WELLS said, when he came to the Council this morning, he expected that the adjourned debate on his Honorable and learned friend's amendment would have closed after the Council had heard the observations of his Right Honorable friend, and of the Honorable Member for Bengal, together with the reply of his Honorable and learned friend. But to his astonishment the Honorable Member for the North-Western Provinces had re-opened the whole question by reading a letter relating to a conversation between a Subadar and a Sahib about a sword, calculated to cast ridicule on the whole of our proceedings. Suppose he (Sir Mordaunt Wells) was to say he did not believe one word of it, could the Honorable Member substantiate the truth of his story? Then the Honorable Member had raised the question as to the origin of the mutiny, and had challenged him (Sir Mordaunt Wells) to show on what authority he had stated that what had occurred was nothing more than a mere Military mutiny. He would reply that his authority was every important work which had, from time to time, been published upon the subject by those who knew what they were writing about. He had read the observations of every writer on the Indian Rebellion of 1857-58, and he was convinced that it was nothing but a downright rebellion of the people in the North-Western Provinces. But to tell him that it was a mere Military mutiny, to tell him that the people did not sympathize and take part in the whole-sale murders and atrocities which had been committed in the North-West, to tell him that there was no communication carried on from one end of India to the other on the subject of a simultaneous revolt, was to tell him what he did not believe, and what every Military man and every official in India knew to be not true There was a microscopic manner about the Honorable Member for the North-West, which he considered most objectionable. The Honorable Member referred to certain observations of his Right Honorable friend at an earlier stage of the debate. He (Sir Mordaunt Wells) must say that it was not usual in the House of Commons to fasten upon Members expressions which might have escaped them in debate. Speeches thus delivered on the spur

of the moment were not so free from criticism as an opinion deliberately committed by pen to paper. The Honorable Member had pleaded for districts whose inhabitants had risen in rebellion against us. Having obtained the interesting communications which were contained in the papers to which reference had so often been made, what value, he would ask, were we to place upon them, were we to act upon such letters or parole communications as that with which the Honorable Member for the North-Western Provinces had treated us, in preference to the reports of the officials of the North West? What he (Sir Mordaunt Wells) wished to say was, let us legislate on known settled data. He was sorry that this discussion had again been raised. But as that had been done, he must say that in the face of those fearful outrages, which must remain on the imperishable page of history, it was nonsense, worse than nonsense, to assert that there was not a sympathy with the rebels on the part of the population of the North-West.

MR. HARINGTON said, he should confine himself to a very few observations in reply to what had fallen from the Honorable and learned Judge on his left (Sir Mordaunt Wells) The Honorable and learned Judge had tried to be witty at his (Mr. Harington's) expense. But he would tell the Honorable and learned Judge that no amount of ridicule from him would have the effect of deterring him (Mr. Harington) from doing his duty. That duty, in the present instance, appeared to be that he should bring before the Council the grounds on which it seemed to him that it would not be right, and that it was not necessary, while passing a general disarming law for the whole of India, to introduce into it special provisions which would really affect the North-Western Provinces alone, and not only cast a stigma upon those Provinces, but subject them to a very severe regulation as regarded the possession of arms, even though required only for defence against robbers and wild beasts, which was not to extend to the other parts of the country, unless under very special circumstances. All that he asked was that the same rule should be applied to the North-Western Provinces which was deemed sufficient for the rest of India. It was the Honorable and learned Judge and not he (Mr. Harington) who had raised the question as to the character of the revolt which had occurred in 1857. On this subject, notwithstanding what had fallen from the Honorable and learned Judge, he must repeat that it was the mutiny in the Bengal army alone and nothing else which led to the disturbances in the North-Western Provinces. That whatever of rebellion there was in those Provinces arose out of the mutiny, and that had there been no mutiny, there would assuredly have been no rebellion. Looking to the state of the country at the time, to the absence of all Civil power, and to the doubts that existed as to the restoration of our rule, the wonder was, not that there was so much, but that there was so little of real rebellion against the Government Under these circumstances, and considering how immediately the people had returned to their allegiance on the restoration of our authority, and how well they had behaved ever since, he certainly thought that it was a little hard upon the North-Western Provinces, and that it was not very politic to single them out now, and to make them at this time the subject of special penal legislation. What the country appeared to him to stand most in need of was rest and relief from a law such as that contained in the Clause of the Section under consideration, which must keep up the necessity of a constant search for arms, however obnoxious to the people it might be, otherwise the law would be a dead letter, and if that was to be its character, it would be better not to pass it. He must repeat that it was particularly necessary at the present time, when the important financial measures of the Right Honorable gentleman opposite were about to be introduced, not to enact or continue laws which, from their character, must of necessity produce considerable irritation, and the Clause before the Committee seemed to him to fall

within this category. He had nothing more to say.

MR. WILSON said, he did not rise to complain of his having been quoted by the Honorable Member for the North-Western Provinces, on whom the Honorable and learned Judge had been rather too hard. But he thought the Honorable Member for the North-Western Provinces had mi-apprehended the present position of the Bill as it now stood. The local Government could withdraw the proclamation if they conceived that a further disarming of the population was unnecessary. What he had stated formerly was that nothing would induce him to consent to any provision for a search for arms, unless the power was guarded by the strictest limitation, so as to ensure that it should be properly exercised under European supervision.

THE CHAIRMAN said, he would explain the object of the provision. It was intended to obviate the inconvenience of issuing a new proclamation in the partially disarmed district of the North-Western Provinces. It would be very inexpedient to issue a fresh proclamation; it might be misunderstood by the people. If there was to be no penalty for the possession of arms and no provisions for a search for weapons, the disarming Sections of the Bill would be rendered a nullity, and could not be enforced. But there were severer penalties in Act XXVIII of 1857, which had not been adverted to by the Honorable Member for the North-Western Provinces. The Honorable Member must be aware that the present Bill guarded against the possibility of oppression being practised by providing that no search shall take place unless in the presence of an European officer. All that this part of the Section meant was that the power must be given to Government to disarm the people wherever it was considered necessary to do so. Then as to the private communications which the Honorable Member had referred to, if he were a short time a Member of the Supreme Court he would be better able to appreciate the value of such testimony. The Honorable Member for the North-Western Provinces had referred to the opinion of the Honorable Member of Council (Sir Bartle Frere) as to the effect produced in Sind by a simple prohibiton against the carrying of weapons. He (the Chairman) had not the same experience of that country as the Honorable Member (Sir Bartle Frere) had. But he (the Chairman) did not believe that, if you prevented persons from carrying arms, you would take away from them the desire to possess arms; he believed that the prohibition would rather have a contrary effect. He thought that the reports from the North-Western Provinces showed that the people were anxious to get back their arms, and it was the duty of the Council to prevent them from accomplishing that object. He had no objection to giving power to the local Government to withdraw disarming proclamations, but he conceived that it was not sound policy to require local Governments, who considered that it was necessary to continue disarming operations, to issue fresh proclamations.

SIR BARTLE FRERE begged to correct the Honorable and learned Chairman as to what he (Sir Bartle Frere) had stated relative to the effect of a prohibition to carry arms. He had never said any thing so absurd as that by prohibiting people from carrying arms, you took from them the desire to have arms. What he did say was that by prohibiting people from carrying arms, you get them out of a habit of keeping arms which are not absolutely necessary for their own defence or for their lawful pursuits—and that the result was that in a few years you will find arms in the possession of none but those who use them for lawful purposes, such as killing wild beasts—or who are from their rank and wealth not dangerous to the peace of the country. This was the result of a law of human nature. Arms are always of considerable value to a poor man and easily turned into money, and if you prevent a poor man from ever taking them out of his house, he will soon part with them and turn them into money, and as for the same

reason, none of his poor neighbours will buy them, they generally disappear altogether and go out of the country. This was what he (Sir Bartle Frere) had said, and what he begged still to maintain.

After some further discussion the Clause was put and agreed to.

Clauses 3, 4, and 5, which were as follows, were severally carried :—

3. "In every such district or place which shall be ordered to be disarmed, the order of the Governor-General in Council, or of the local Government, shall be published in the *Calcutta Gazette*, or in the *Gazette* in which the orders of the Governor General in Council or of the local Government making the order, as the case may be, are usually published, and shall also be made public in such other manner as the Governor-General in Council or the local Government shall direct.

"4. Every person who, after the expiration of the time mentioned in such order in any district or place to which this Section shall be extended, or who, after the passing of this Act in any district or place in which an order for a general search for arms has been issued, and is still in operation as aforesaid, shall have in his possession or custody any such arms as aforesaid, or any percussion caps, sulphur, gunpowder, or other ammunition, without such license as aforesaid, shall be liable to be imprisoned with or without hard labor for a term not exceeding two years, and also to a fine not exceeding 1,000 Rupees, and it shall be lawful for the Magistrate or other officer mentioned in the order to search or cause a search to be made of the premises occupied by such person, or on which the Magistrate may have reason to believe that any such arms, percussion caps, sulphur, gunpowder, or other ammunition are concealed.

"5. The search shall be conducted by the Magistrate in person, or by a Joint or Deputy Magistrate, or European Assistant, or by some Officer, Civil or Military, appointed by Government, with power to conduct such searches, and all such arms, percussion caps, sulphur, and ammunition found on any such search shall be confiscated."

Clause 6 was proposed as follows :—

"The provisions of this Section shall not extend to any person exempted by the authority issuing the order for disarming the district or place, or who may be exempted by the authority of the local Government, nor to Europeans, Americans, or Eurasians."

MR. WILSON moved as an amendment the omission of the above Clause and the substitution of the following :—

"The provisions of this Section shall not extend to any person or persons exempted by the authority of the Governor-General in Council or of the local Government of the proclaimed district or by any European Officer serving in such district duly authorized by the local Government in that behalf."

THE CHAIRMAN said, he must certainly contend in favor of the original motion. No sufficient reason had been given for not exempting Europeans. There was no doubt of the loyalty of Europeans, and as the Council was in as good a position to judge of this as the Executive Governments and the local Officers, he thought that the exemption ought now to be made at once. When he spoke of Europeans, he meant of course the other classes mentioned in the original motion. He would first ask, was it intended to disarm Europeans or not? If they were to be exempted, he thought that we ought to take upon ourselves to exempt them. Then, was it intended to compel Europeans to take out a license in a proclaimed district? The arguments previously used did not now apply, as the Act where this Section was to be in force would be obviously more than a Police Act, it was to be left to the discretion of the local Officers to say whether Europeans ought to be exempted or not. He did not think that such a discretion ought to be left to the Magistrates, but that it was our bounden duty to make the exemption in the Act once for all. How were the local Officers to say, whether Europeans ought to be exempted or not. The exemption must be made some time or other. If we left a discretion to the authorities to grant the exemption, and expect them to do so, it was as much class legislation as if we exempted them at once in the Act. It was not necessary to legislate for all alike; but the circumstance of each district and each class should be considered, if we really desired equality of legislation. The Honorable Member for the North-Western Provinces had said that, if Europeans had been exempted in the former Act, they might be exempted now; but that, as they were not then exempted, there would be a difficulty in exempting them now. The present Act however was very

different from the former one. Assuming that a difficulty had arisen, it surely was not an insuperable one. If there was any difficulty, were we to throw it off our shoulders, and impose it on the Governor-General in Council? If the Governor-General in Council should feel a difficulty in exempting Europeans in the North-Western Provinces, who were not exempted when the former Act was extended to them, the Lieutenant-Governor would feel still greater difficulty, as neither the Legislature nor the Governor-General in Council had thought it proper to make the exemption. If the Lieutenant-Governor should not exempt, the local Officers would feel the greatest difficulty with the precedent before them of two Acts of the Legislative Council, the proclamation of the Governor-General in Council and the order of the Lieutenant-Governor. The question was one on which a great difference of opinion prevailed. Some persons might enter an an opinion that Europeans ought to be disarmed. He believed that some Honorable Members of this Council entertained such an opinion. At any rate, he understood some Honorable Members to contend for one thing and others for another, why, therefore, should we leave so doubtful a matter to the discretion of the local Officers? In one district, the Magistrate might say that it would be a partial administration of the law to exempt Europeans, and he would not therefore do it. In another district, the Magistrate might say that he cared little about that and that he would exempt them. Thus we should have one rule in one district and a different rule in another. He would ask Honorable Members, who said that Europeans were not to be exempted from this Bill, whether Europeans were in reality to be exempted or not. If so, why should we not do it now—was it that they were afraid of class legislation? The Right Honorable gentleman made allusion to Her Majesty's proclamation in support of not exempting Europeans. He (the Chairman) thought, however, that Her Majesty's proclamation in no way prevented our making one law for one class and another law for another, but if that was the intent, the Right Honorable gentleman had himself violated that proclamation by introducing a Clause in the Income Tax Bill, which rendered a person guilty of forgery "liable, if a European or American, to be sentenced to penal servitude for any period not exceeding ten years, or to imprisonment with or without hard labor for any term not exceeding two years, and if not a European or American, to be sentenced to transportation for any period not exceeding fourteen years, or to imprisonment with or without hard labor for any term not exceeding seven years."

He thought, however, that legislation should be adapted to circumstances, and if we found it necessary to make one law for Natives and one law for Europeans, we should not hesitate to do so. A good illustration of this had been given in the *Englishman* newspaper the other day in reference to the case of purdah women. A Native lady of rank was privileged from appearance in a Court of Justice, but no such exemption extended to European ladies. If we were justified in class legislation for the Natives, were we not also justified in class legislation for Europeans, wherever it might be considered necessary? It was for the sake of Government that it was found necessary to pass a Disarming Act, and in doing so, were we not justified in saying that the Natives should be disarmed and the Europeans should not be disarmed? He had instanced the case of the Punjab, where Europeans were exempted, and the Honorable Member (Sir Bartle Frere) had remarked that this was scarcely a case in point, for in the Punjab there were no Europeans, except Civil or Military Officers. But he (the Chairman) would ask, whether a man in the service of Government was more loyal or fit to be trusted with arms than one not in the service of Government. He (the Chairman) said that this Bill was not intended as a Police measure, but to prevent persons from collecting arms and using them against

Government, and it appeared to him that the reason for disarming Natives entirely failed with regard to Europeans. He had pressed his arguments so fully on this point that he would not longer detain the Council with any further observations. He thanked the Council for the attention with which they had listened to him, and he feared that he had wearied them by the discussion of the subject. But he felt strongly that, in passing an Act for disarming Natives, there was not the slightest justification for including Europeans.

SIR BARTLE FRERE said, he would not attempt to recapitulate the arguments against this proposed exemption, which he thought had been fully stated in their previous debates on the subject, but he begged his Honorable and learned friend to recollect that his (Sir Bartle Frere's) objections to the exemption were mainly founded on the consideration that all such exemptions voluntarily adopted were blots on the Statute Book, and a disgrace to our legislation. He did not deny that in carrying out any such principle, practical difficulties might arise, though none had been shown to exist in the present instance; but, if they had existed, it seemed to him (Sir Bartle Frere) our duty rather to face and overcome them than to attempt to evade them by a course which in itself was wrong. His Right Honorable and learned friend (Mr. Wilson) had clearly shown that the exemption to be desired was one that should include all loyal and well disposed subjects; but it was manifestly impossible to attempt such definition in a legal enactment. His Honorable and learned friend admitted this impossibility, but added, as we can't exempt all loyal and well disposed subjects, let us at least exempt some. Let us, said he, exempt our own class, whom we know to be universally loyal and well disposed. He (Sir Bartle Frere) could not assent to such selfish and partial legislation. He need hardly say that he sincerely believed that our own class, the European, was to a man loyal throughout India, but there were other classes of whom the same might be said, and he (Sir Bartle Frere) for one would never consent to an exemption of our own class, while we left other equally loyal classes among our native fellow subjects unexempted. He would not say to the tens of thousands of Native Christians, for instance, who had to a man been loyal throughout India; he would not say to the Parsees, or to those Native Chiefs, who, following the example of Scindia the Nizam and the Rajah of Mysore, had thrown in their lot with us and risked all they possessed; he would not say to them—"You have the same title to exemption as we have, but you may take your chance with the disloyal and suspected." His Honorable and learned friend had urged that we had already a great deal of class legislation, and were still legislating in the same spirit. This, if it were the case, would be no excuse for perseverance in a wrong course, but he (Sir Bartle Frere) begged to deny that any of the instances adduced by the Honorable and learned Chairman were at all in point. He had instanced the difference in the imprisonment which we awarded to Natives or to Europeans, but he (Sir Bartle Frere) need surely not remind his Honorable and learned friend that this difference was made with a view of securing substantial equality. It was notorious that the same term of imprisonment in the same place would form a very unequal punishment to a European and to a Native. Imprisonment in a particular jail and for a particular period, which would be a light punishment to a Native, might be death to a European, and the difference was made so that, as far as possible, the punishment might be physically equalised to both. This apparent inequality was, therefore, in truth, an argument for equal legislation. So with regard to what His Honorable and learned friend called "the exemption of Native Ladies of Rank" from appearing in public in Courts of Justice. Did His Honorable and learned friend really consider this a privilege? No doubt it was a most trying posi-

tion for a sensitive English lady to appear as a witness in a public Court of Justice, but did his Honorable and learned friend believe that Englishwomen, as a class, would accept exemption on the grounds on which it was granted to Native females? He (Sir Bartle Frere) believed that all sensible Englishwomen regarded this obligation to appear in Court for the furtherance of justice in the light in which the mothers and daughters and sisters of Englishmen ought to regard it—as a great privilege, of which, however disagreeable or painful, and whatever its inconveniences, they would not be deprived by any exemption like that of Native females, which was, he submitted, nothing more than a concession to their weakness, and a badge of the position of inferiority in which they are placed by their own customs. His Honorable and learned friend had dwelt much on the argument that the exemption he now proposed was one from being disarmed, and that, consequently, the arguments urged against exemption from the necessity of being licensed to carry arms could not apply to it. He (Sir Bartle Frere) trusted that the Council would agree with him that this was not the case. The very fact of proclamation presupposed an abnormal state, like a state of siege, or a proclamation of martial law, in which the operation of the ordinary laws was more or less suspended. It was a state of things which he trusted would seldom be permitted to last more than a few months; never, he hoped, longer than the imperative necessity for it existed. Such being the case, any arguments which would apply against exemption of any class, in ordinary times, would apply with still greater force when the ordinary laws of the land were for a time superseded, in any particular district. They had had more than two years' experience of the working of the Act which does not exempt Europeans. He (Sir Bartle Frere) had repeatedly asked if any case had occurred of the kind anticipated by the advocates of this exemption, but no case of the kind had been brought forward, nor did he (Sir Bartle Frere) believe any such case was possible.

To the other arguments of his Honorable and learned friend he could not reply better than by reading a letter from the Supreme Government, in reply to a request for exemption preferred by the Christian inhabitants of Bengal shortly after the Act of 1857 was passed. It was printed in the papers of the time, and would be found, he believed, in the *Englishman* of about the 20th October 1857.

The letter was as follows:—

No. 2094.

FROM

CECIL BEADON, ESQ.,

Secy. to the Govt. of India,

To

H. BERNERS, ESQ.,

Attorney-at-Law.

Dated Fort William, the 15th Oct. 1857.

Home Dept.

SIR,—I am directed by the Right Honorable the Governor-General in Council to acknowledge the receipt of your letter, dated the 5th instant, forwarding a petition from certain Christian Inhabitants of Calcutta, praying on behalf of themselves and of all other Christian Inhabitants of the Bengal Presidency, that the Government of India will make a declaration for exempting them from the application of Act No XXVIII of 1857.

2nd.—The Governor-General in Council is unable to comply with the prayer of this petition. At the same time His Lordship in Council directs me to state that all exemptions which may be just and reasonable will be made by the local Government, whenever the Act or any part of it shall be put in execution.

3rd.—The Governor-General in Council cordially appreciates the loyal feelings of the petitioners, and of those in whose name they speak, as also the support which they have given to the Government, but he cannot admit that the fact of the Arms Act being general in its terms, is any reflection upon their body.

4th.—The Governor General in Council does not share the apprehension of the petitioners, that any powers which, under the Act, may be entrusted to Magistrates or Commissioners of Police, will be abused in the manner supposed by them

5th.—Neither does His Lordship in Council agree in viewing the case of the Punjab as parallel to that of Bengal. The Punjab, when the disarming took place, was a newly conquered country, peopled with a hostile race, and it was reasonable to draw a broad line of demarcation between its whole native population and all Europeans who might become resident there. In Bengal, on the contrary, a large portion of the population is loyal and well-affected to the British Government, and many have given proofs of this by exercising influence and risking property and life in support of the Government.

6th.—If then the law should undertake to lay down a line of distinction, and should class these men with those who are not to be trusted, it would be a great injustice. If, on the contrary, it draws no distinction, but leaves all exemptions to be made according to circumstances by the Government which administers the law, no such injustice is committed, and it appears to the Governor-General in Council scarcely possible that any Englishman or any Christian, viewing the case dispassionately, should find offence to himself in such a law. Most assuredly no such offence is intended, and the Governor-General in Council has directed me to furnish this explanation to the petitioners in proof that such is the case.

I have, &c.,

(Signed) C. BEADON,

Secy. to the Govt. of India.

These were the sentiments of the Government of India of that time, and he (Sir Bartle Frere) submitted that nothing had since occurred to invalidate the arguments, or to show that the anticipations then entertained were otherwise than just.

THE CHAIRMAN asked, whether the Honorable Member meant to say that he (the Chairman) had concurred in those arguments.

MR. WILSON said, that the Honorable and learned Chairman had misunderstood his Honorable friend (Sir Bartle Frere), who read the letter simply to show the opinions of the Government of the time.

SIR BARTLE FRERE said, that he did not wish to individualize any Member of the Government, he simply read the letter, as he had referred to the Act of 1857, to show the opinions which the Government of India then held—to show what were its anticipations of the working of the Bill, and how completely those anticipations had been fulfilled.

After some further discussion the Council divided—

Ayes 4.	*Noes* 3.
Mr. Forbes.	Sir Mordaunt Wells.
Mr. Harington.	Mr. Sconce.
Mr. Wilson.	The Chairman.
Sir Bartle Frere.	

So Mr. Wilson's amendment was carried.

Section XXXII was passed after amendments.

Section XXXIII was passed as it stood.

Section XXXIV related to the cognizance of offences under this Act, and Section XXXV provided for imprisonment in case of non-payment of fine.

THE CHAIRMAN moved the omission of the above Sections and the substitution of the following, which prescribed the mode of enforcing penalties :—

"Except as otherwise provided, all offences under this Act may be tried by any Magistrate, Joint Magistrate, or person lawfully exercising the powers of a Magistrate, unless the period of imprisonment to which the offender may be liable exceed that which the Magistrate, Joint Magistrate, or other Officer as aforesaid is competent to award under the laws for the time being in force in the Presidency or place in which such Magistrate, Joint Magistrate, or other Officer as aforesaid is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such Magistrate, Joint Magistrate, or other Officer as aforesaid, the offender shall be committed for trial before the Sessions Judge, if the evidence given before such Magistrate, Joint Magistrate, or other Officer as aforesaid shall appear to such Magistrate, Joint Magistrate, or other Officer sufficient for the conviction of the accused.

"Except as aforesaid, all offences declared to be punishable under this Act with fine, or fine and imprisonment, may be tried in the District or place in which the offence was committed, or in which the person charged with the same is apprehended.

"A Magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only, to any of his Assistants, and in such case every such Assistant may exercise all the powers vested in a Magistrate by any law for the time being in force, subject to all the rules applicable to

criminal cases deputed to such Assistant acting judicially.

"The local Government may give general authority to any such Assistant to exercise, without reference by a Magistrate, any of the powers which they are hereby rendered competent to exercise upon reference by a Magistrate, subject to appeal to the Magistrate from any conviction by such Assistant within one month from the date of conviction.

"A Magistrate may at any time call from any of his Assistants any case pending before such Assistants

"If any offence which by this Act is declared to be punishable with fine and imprisonment, or imprisonment only, shall be committed by a European British subject beyond the local limits of the jurisdiction of Her Majesty's Supreme Courts of Judicature, the offender shall be liable, upon conviction before one of the said Supreme Courts of Judicature, to the punishment to which by this Act the offender is declared to be liable upon conviction.

"If any offence which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the jurisdiction of any Court of Judicature established by Royal Charter, such offence shall be punishable upon summary conviction by any Magistrate of Police of the Presidency Town or Station in which such Court is held

"No conviction, order, or judgment under the last preceding Section shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state on the face of the conviction order, or judgment the evidence on which it proceeds, but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment in obedience to any writ of *certiorari*, and if no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction order, or judgment shall be aided by what so appears in such depositions.

"All other offences punishable under this Act, which shall be committed within the local limits of any Court of Judicature established by Royal Charter, shall be punishable by such Court

"All forfeitures or penalties imposed under the authority of this Act for offences punishable by any Magistrate, or person lawfully exercising the powers of a Magistrate, or Assistant Magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender by warrant under the hand of any of the abovenamed Officers

"In case any such forfeitures or penalties shall not be forthwith paid, any such Officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress

"If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Officer, by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such Officer may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such Officer, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months, when the amount shall not exceed one hundred Rupees and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount

"If the offender shall be a European British subject the Magistrate shall record the facts and transmit such record to the District Court of the District wherein the offender is convicted, and the amount of the fine and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court."

The Sections were severally agreed to.

Section XXXVI was passed as it stood.

Sections XXXVII and XXXVIII were omitted.

Section XXXIX was passed as it stood.

Section XL was passed after an amendment.

Section XLI was passed as it stood.

THE CHAIRMAN moved the introduction of the following new Section after Section XLI:—

"Whenever an award of hard labor is made under this Act, the Court shall not commute such labor to the payment of a fine under Regulation II 1834 of the Bengal Code"

Agreed to.

Section XLII and the preamble and title were severally passed as they stood.

The Council having resumed its sitting the Bill was reported.

PUBLIC CONVEYANCES (PRESIDENCY TOWNS AND STRAITS SETTLEMENTS)

MR SCONCE moved that Sir Mordaunt Wells be added to the Select Committee on the Bill "for regulating

public conveyances in the Towns of Calcutta, Madras and Bombay, and the several stations of the settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

POSTPONED ORDERS.

The following Orders of the Day were postponed:—

The adjourned Committee of the whole Council on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

The adjourned Committee of the whole Council on the Bill "for the licensing of Arts, Trades, and Professions."

The Committee of the whole Council on the Bill "relating to the Transportation of Convicts."

The Committee of the whole Council on the Bill "relating to Emigration to the British Colony of Natal."

The Council adjourned at 6 o'clock on the Motion of Sir Bartle Frere, till Monday morning, at 7 o'clock.

Monday Morning, July 9, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq., and
H. B Harington Esq.,	Hon'ble Sir M. L. Wells.

FINANCES OF INDIA.

MR. SCONCE begged, before proceeding with the discussion on the Income Tax Bill, to ask the Right Honorable gentleman whether there was any ground for the apprehension entertained by some persons, that India was to be made to contribute towards the expenses of the present war in China.

MR. WILSON thought it quite natural that, at a time when we were about levying a new tax on the resources of this country, he should be asked if the Indian Finances were to be burdened with the heavy expenses of the war England was carrying on with China. The finances of India labored at present under the same disadvantages as they had been doing of late, and no diversion of the resources of this country could be made to any other quarter. When he first read the observations which fell from Mr. Sidney Herbert in Parliament, and saw the small sum put down in the estimates for this expedition, his apprehension was excited. The remarks he alluded to also struck the Governor-General They protested against India being made to bear any portion of these expenses, and the reply sent by the Home Government was a most satisfactory one. Not a shilling was to be paid by India towards the expenses of the war with China.

The rumour of Commissariat drafts being drawn upon this treasury was, however, not without foundation. It had been arranged by way of Exchange to allow the Commissariat to draw about £50,000 monthly. The sums so drawn were to be replaced in the East India House and credited to the account of Military and other stores sent out to this country. The treasury was certainly not quite full, otherwise our presence this morning would not be needed to discuss the way and means of replenishing it; but certainly we could spare the sum he stated, without there being any inconvenient pressure on the finances of India.

He (Mr. Wilson) believed, that even the expenses incurred here and in Bombay, in forwarding troops to China, had either been paid or would be paid immediately.

INCOME TAX.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill.

THE CHAIRMAN moved the addition of the following words to Rule 4 of Section XCVI:—

"Every return required by this Section shall contain the name of any person not being ryots exempted under Section CXXIX of this Act, to whom such lands or houses or any part thereof are under-let by the person making such return, and the amount of rent payable on every such lease."

The Motion was carried, and the rule as amended then passed.

The postponed Rule 6 provided as follows:—

"In estimating such rents and profits, the gross amount received during the preceding year shall be fully stated; but if the person receiving the same be himself liable to pay, in respect of the said land, any rent to any superior landlord, he shall state in his return the amount of such rent, and the name of the person to whom it is payable, and he shall be charged with the said Duties on his net rent and profits after deducting the amount of the rent so payable by him to such superior landlord."

MR. WILSON said, it had been suggested by the Bengal Government that the safest course would be to take the name of the person in the Collector's book and to deal with him alone, charging him with the Duty on the whole value of the land as tested by the jumma. But there were considerable difficulties in the way.

SIR MORDAUNT WELLS said, he hoped that the principle of the English Bill would be adhered to, and that the occupier, when found practicable, would be charged and then be allowed to deduct from those to whom he paid rent. It would be highly advisable in many districts to charge the tax in the first instance on the parties actually receiving the rents from the ryots. He spoke from experience in England of the advantage of this system, and he warned the Government that, if they adopted any other, they would lose a large part of their tax.

MR. SCONCE said that it would be impossible to adopt such a system here. The infinite variety of sub-tenures, both as to the amount of rent payable and the position of successive tenants, rendered it impossible. As to the amount of rent receivable, it varied from one Rupee or less to several hundreds of Rupees. If you were to deduct the Income Tax from the tenant's rent, where would you begin? You could not call upon all ryots receiving one Rupee, or more or less, to render a return of their rent and make your deduction. Where then would you begin? You could not begin justly even with a rent of two hundred Rupees. Out of that sum the tenant might pay away one hundred or one hundred and fifty Rupees, and you could not with justice compel him to pay for your own convenience a tax to which he was not liable, and which you knew you were bound to refund. Again as to middle tenants land might be held by several co-sharers, each of whom had but a fractional share in the under-tenure. Gundah shares were of very common occurrence. A five gundah share was an eightieth part, and clearly if you deducted the Income Tax upon the gross rent, you would cause infinite inconvenience to men who were not liable at all. The rent payable to the superior landlord might be in like manner payable to a number of co-sharers, and among the whole body of recipients not one might be in the receipt of a clear two hundred Rupees. Cases of these minute sub-divisions were infinite in number. Government had to see that, in getting in their revenue, they did not occasion any oppression. If the first receiver were held chargeable, whether he had a clear two hundred rupees for himself or not, it would often happen that the tax would be taken from him and that he would be left without any adequate remedy. The only proper and possible course was to take the returns of persons liable to be assessed, and to assess each upon his own profits.

THE CHAIRMAN said, there were difficulties either way. If the zemindars were held chargeable, it might be found that he had let his land in pretence, and that he was paying the Income Tax for others from whom he could not recover it. The Rajah of Burdwan, for instance, might be made to pay on an immense estate,

while his own receipts were from putnees which yielded him only a small portion of the value of the property. How was he to recover from the putnedars? Then, on the other hand, there was the difficulty in the case of the occupier, which had been stated by the Honorable Member for Bengal. He (the Chairman) thought that the better plan might be to charge the receiver of the rents subject to deduction on what he paid to the superior, and to give the assessor the option of charging him without allowing that deduction, leaving the person himself to deduct.

SIR BARTLE FRERE said, he was inclined to adopt the rule suggested by the Government of Bengal. Under the existing system, the Government could only be certain of the zemindar in their books. They might tax him, and he might recover from those under him with whom he would be much better acquainted than the Collector could be.

MR. HARINGTON said, he did not wish to prolong the discussion, but he must remark that he entirely concurred in the observations which had fallen from the Honorable Member for Bengal as to the difficulties and complications which would arise if they adopted either the rule advocated by the Honorable and learned Judge on his right (Sir Mordaunt Wells), or the alternative rule proposed by the Honorable and learned Chairman. He did not share in the apprehensions entertained by the Honorable and learned Judge that, if the rule, as it now stood in the Bill, were adopted, the Government would lose one-third of the Income Tax on the particular description of property to which that rule was intended to apply. On the contrary, it seemed to him that, if they abandoned the rule which required every landholder, whatever might be the nature of his tenure, to return his profits, and rendered him assessable thereon, and in lieu looked for the payment of the Income Tax on the land only to the tenant who actually collected the rents, many of the intermediate tenants or holders, who were properly assessable to the duty, would slip through, and the result would be that the Government would be great losers. With regard to the objection which had been mentioned by the Honorable Member of Council (Sir Bartle Frere), namely, that, under the rule as it now stood, it would be impossible for the Government Officers to know from whom to expect or require returns, he (Mr. Harington) would only observe that no greater difficulty should be experienced as regarded the particular classes assessable under the rule in question than would be found to exist in respect to other classes under Section XXXVII of the Bill. It would be the duty of the assessors to serve all persons within their jurisdictions, whom they considered liable to the Duties intended to be imposed, with a notice requiring a return of their income or profits. The rule which required these returns applied not only to bankers, traders, and house-holders, but to all holders of land, and as regarded the class last mentioned, it would be incumbent upon the assessor of the district or the Collector acting as assessor to find out every landholder or owner in his district, or other person deriving profits from land assessable to the Duties under the Bill, and to serve him with the prescribed notice. He (Mr. Harington) thought it would be quite impossible, where an estate had been minutely sub-divided among a large number of tenants in the manner noticed by the Honorable and learned Chairman, to make every tenant pay, not only the Income Tax for which he was himself liable, but also the quota of the tax payable by some superior holder. He preferred the Section as it stood, and thought that it would be found to work satisfactorily.

MR. WILSON said, the principle of the Bill certainly was opposed to levying the tax on any one in respect of the liability of another, unless he had funds in his hands. A Putnedar might pay for the zemindar and deduct the amount in his payment of rent. But the zemindar, if he paid for those below him, had nothing to deduct from, but would, in fact, be advancing the money for another. He was disposed to adopt the suggestion of the Chairman as the best solution of a practical difficulty.

The Chairman

THE CHAIRMAN then proposed several amendments, which were carried, and which made the Section run as follows:—

"In returning such rents and profits, the gross amount received and receivable during the preceding year, shall be fully stated; but if the person receiving or entitled to receive the same, be himself liable to pay, in respect of the said land, any land revenue to Government or any rent to any superior landlord, he shall state in his return the amount of such revenue and rent, and the name of the person to whom the rent is payable, and he shall be charged with the said Duties on his net rent and profits, whether received or not, after deducting the amount of such rent, or of the rent so payable by him to such superior landlord.

THE CHAIRMAN moved the addition of the following words to the Rule:—

"Or at the option of the assessor he may be charged with the Duties on the net rent and profits, without making any such deduction on account of rent, and in that case he may deduct from the rent payable by him to such superior landlord the amount of Duty paid on the amount of such rent."

The question being put, the Council divided—

Ayes 4.	*Noes* 3.
Sir Mordaunt Wells.	Mr. Sconce.
Mr. Wilson.	Mr. Forbes.
Sir Bartle Frere.	Mr. Harington.
The Chairman.	

So the Motion was carried, and the Rule as further amended, was then passed.

The further consideration of the Bill was postponed, and the Council resumed its sitting.

The Council adjourned at 10 o'clock, on the Motion of Sir Bartle Frere, till to-morrow morning, at 7 o'clock.

Tuesday Morning, July 10, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq., and
H. B. Harington, Esq.,	Hon'ble Sir M. L. Wells.

INCOME TAX.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill.

After a verbal amendment in Rule 6 of Section XCVI, which was divided into two Clauses,

THE CHAIRMAN moved the addition of the following Clauses to the same Rule:—

"Whenever any person shall pay the said duties on the rent or profits of any house or land, without deduction on account of any land revenue or rent payable by him in respect of such house or land, he shall have a right to deduct from any revenue or rent payable by him, as the case may be, a sum equal to the amount of the duty computed upon such revenue or rent.

"A deduction from revenue or rent under the provisions of this Act shall be deemed a payment to Government by the person from whom the deduction is made of the amount so deducted."

Agreed to.

The postponed Rules 7 and 8 were passed as they stood.

THE CHAIRMAN moved the omission of all the Rules under the head of "Rules as to districts in which persons are chargeable," and the substitution of the following:—

"Every Body Corporate, Company, or Society shall be charged to the duties contained in this Act by the Collector or Commissioners acting for the place where the head office in India of such Body Corporate, Company, or Society is situate.

"Every person being a house-holder, except persons engaged in any trade, profession, or employment, shall be charged to the said Duties contained in Schedule 2 by the Collector or Commissioners acting for the place where the dwelling house of such person shall be situate.

"Every person engaged in any trade, profession or employment shall be charged to the said Duties contained in the said Schedule 2 by the Collector or Commissioners acting for each place where such trade shall be carried on, or such profession or employment shall be exercised.

"When any trade shall be carried on in India by the manufacture of goods, wares, or merchandize, the assessment thereon shall be at the place of manufacture, although the sale of such goods, wares, or merchandize shall be elsewhere.

"Every person not being a house-holder, nor engaged in any trade, profession or employment, who shall have any place of ordinary residence, shall be charged by the

Collector or Commissioners acting for the place where such person shall ordinarily reside.

"Every person not hereinbefore described shall be charged by the Collector or Commissioners acting for the place where such person shall reside at the beginning of each year.

"Every such charge shall be valid and effectual notwithstanding the subsequent removal of the person so charged from such place.

"Every person not being engaged in any trade, profession, or employment, having two or more houses at which he shall be ordinarily resident, shall be charged by the Collector or Commissioners acting for each place where such houses shall be situate.

"Every person having two or more residences, or carrying on any trade, or exercising any profession or employment in different places, or in any place different from the place of his ordinary residence, shall be served with a notice in each of such places, and shall deliver in each of such places the like returns and declarations as he is required to deliver by this Act. Such person shall, in each of his returns, state all the places in which he carries on any trade or exercises any profession or employment, the place of his ordinary residence, and the place where he resided at the beginning of the current year.

"The Duty to be assessed by virtue of this Act in respect of the profits or income arising from possessions, or securities out of British India, whether within any other of Her Majesty's dominions, or not, shall be stated to and assessed by the Collector and Commissioners respectively acting for the place where the persons receiving or entitled to the same shall reside or carry on any trade or profession.

"No person who shall be liable to be charged in different places under this Act shall be liable to any double payment in respect of the same property or source of income.

The Rules were severally agreed to.

THE CHAIRMAN moved the omission of Rule 19 as being provided for by the amendment just carried.

Agreed to.

Rule 25 was passed after verbal amendments.

THE CHAIRMAN moved the introduction of the following new Section after Section CCXX:—

"If any person being legally bound by an oath or solemn affirmation of secrecy under this Act, shall wilfully disclose any matter which by such oath or affirmation he is bound to keep secret, he shall be liable to be imprisoned with or without hard labor for a period not exceeding three years, and shall also be liable to a fine not exceeding five thousand Rupees."

Agreed to.

THE CHAIRMAN moved the omission of Sections CCXXVI to CCXXXVI, and the substitution of the following:—

"Except as otherwise provided, all offences under this Act may be tried by any Magistrate, Joint Magistrate, or person lawfully exercising the powers of a Magistrate, unless the period of imprisonment to which the offender may be liable exceed that which the Magistrate, Joint Magistrate, or other Officer as aforesaid is competent to award under the laws for the time being in force in the Presidency or place in which such Magistrate, Joint Magistrate, or other Officer as aforesaid is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such Magistrate, Joint Magistrate, or other Officer as aforesaid, the offender shall be committed for trial before the Sessions Judge, if the evidence given before such Magistrate, Joint Magistrate, or other Officer as aforesaid shall appear to such Magistrate, Joint Magistrate, or other Officer sufficient for the conviction of the accused.

"Except as aforesaid, all offences declared to be punishable under this Act with fine or forfeiture, or fine and imprisonment, may be tried in the district or place in which the offence was committed, or in which the person charged with the same is apprehended.

"A Magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only, to any of his Assistants, and in such case every such Assistant may exercise all the powers vested in a Magistrate by any law for the time being in force, subject to all the rules applicable to criminal cases deputed to such Assistant acting judicially.

"The local Government may give general authority to any such Assistant to exercise, without reference by a Magistrate, any of the powers which they are hereby rendered competent to exercise upon reference by a Magistrate, subject to appeal to the Magistrate from any conviction by such Assistant within one month from the date of conviction.

"A Magistrate may at any time call from any of his Assistants any case pending before such Assistants.

"If any offence which by this Act is declared to be punishable with fine and imprisonment, or imprisonment only, shall be committed by a European British subject beyond the local limits of the jurisdiction of Her Majesty's Supreme Courts of Judicature, the offender shall be liable, upon conviction before one of the said Supreme Courts of Judicature, to the punishment to which by this Act the offender is declared to be liable upon conviction.

"If any offence which by this Act is declared to be punishable with fine or forfeiture, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the jurisdiction of any Court of judicature established by Royal Charter, such offence shall be punishable upon

summary conviction by any Magistrate of Police of the Presidency Town or Station in which such Court is held

"No conviction, order, or judgment under the last preceding section shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds, but the depositions taken, or a copy of them shall be returned with the conviction, order, or judgment in obedience to any writ of *certiorari*, and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions

"All other offences punishable under this Act, which shall be committed within the local limits of any Court of Judicature established by Royal Charter, shall be punishable by such Court.

"All fines, forfeitures, or penalties imposed under the authority of this Act for offences punishable by any Magistrate, or person lawfully exercising the powers of a Magistrate, or Assistant Magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender by warrant under the hand of any of the abovenamed Officers.

"In case any such fines, forfeitures, or penalties shall not be forthwith paid, any such Officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

"If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, forfeiture or penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Officer, by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied, if a warrant of distress were issued, any such Officer may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such Officer, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

"If the offender shall be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted, and the amount of the fine, forfeiture, or penalty and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court."

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after Section CCXLVIII:—

"No action or other proceeding shall be had or taken against any Officer for any thing done by him in or relating to the imposition or levying of any tax or duty heretofore imposed or levied, with the sanction of the Governor-General of India in Council, or of the local Government; and every Tax or Duty heretofore assessed or imposed by any such Officer, with such sanction as aforesaid, so far only as concerns such assessment or tax or Duty for the current year, may be levied or collected in the manner heretofore sanctioned by the Governor-General of India in Council or by the local Government."

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after Section CCXXXVI:—

"Whenever an award of hard labor is made under this Act, the Court shall not commute such labor to the payment of a fine under Regulation II. 1834 of the Bengal Code."

Agreed to.

Section IV provided as follows:—

"Upon every fractional part of one hundred Rupees of the annual value or amount of the property and profits aforesaid, the like proportion of Duty at the respective rates aforesaid shall be charged, but no Duty shall be charged of a lesser denomination than one anna."

MR. SCONCE moved the omission of the above Section, and the substitution of the following:—

"Upon every fractional part of the annual value of the property and profits aforesaid, which, being less than one hundred Rupees, shall amount to fifty Rupees and upwards, Duty amounting to one-half of the respective rates aforesaid shall be charged. No Duty shall be charged, if the said fractional part do not amount to fifty Rupees."

He said that the object of this amendment was to prevent inconvenience likely to arise by persons being obliged to pay an Income Tax on fractional portions of their income. According to the present Section, a party

would be assessed to the fractional part of even one anna. As this would involve endless trouble and annoyance, he proposed what he believed would not only afford considerable relief to the people, but also prove a much simpler plan, namely, that no Duty should be charged on fractional parts less than fifty Rupees, and that fractional parts between fifty and hundred Rupees should be charged at a fixed half rate. Thus a person drawing five hundred and thirty Rupees would pay the tax on five hundred Rupees only; and a party drawing five hundred and sixty rupees would pay the full rate on five hundred rupees, and a fixed half rate on the remainder.

MR. WILSON said, his Honorable friend, appeared to proceed on the principal of "throwing in the odd money." Instead of the amendment making matters simpler, it appeared to him calculated to complicate and confuse accounts. He saw no reason why a man on the receipt of three hundred and forty-nine Rupees, should pay a tax only on three hundred Rupees, or why a man on the receipt of three hundred and sixty Rupees should not pay the same on the sixty Rupees as he would on the three-hundred Rupees

MR. FORBES said, the proposition of the Honorable Member for Bengal was calculated rather to relieve the Assessors than the public. He could not agree with the Honorable Member that the Section, as it now stood, was in any way troublesome or inconvenient to the party assessed, for all he had to do was to make a return of his income, and it would be the assessors' duty to charge him accordingly. Thus the trouble of computing the charge would fall on the assessors and not on the party assessed, and he saw no reason for lightening the work of the assessors, who would be paid for doing their duty. It had been frequently urged that the unpopularity of the Income Tax arose from the disinclination of the people to decrease the amount of their incomes, but the present proposition would have no effect whatever in removing this objection, because it would still be necessary that the real income should be returned to enable the assessor to ascertain whether the fifty Rupee limit proposed by the Honorable Member were exceeded or not. It seemed to him, therefore, that the only result of carrying this motion would be to diminish the Government receipts without any relief to the people from that which was said to constitute their main objection to the tax, namely, the necessity for declaring their incomes. He thought that if we were to impose what was certainly an unpopular tax, we ought to obtain for Government the largest return we could.

THE CHAIRMAN said, when we came to remember that the lowest income that would be taxed was two hundred Rupees, he thought it would be unjust to allow persons drawing five hundred and forty-nine or six hundred and forty-nine Rupees to pay nothing for the fractional parts of their incomes.

The Motion was then put and negatived.

After some trifling amendments in Sections XXII and XXIII—

MR. SCONCE moved the introduction of the following new Section after Section XXIV, the object of which was to enable the Collector and Commissioners, of their own authority, to exercise the functions of the assessors in the event of the absence of the latter:—

"The Collector and Commissioners respectively may, at his or their discretion, exercise any of the functions that may be performed by assessors."

Agreed to.

Section L provided as follows:—

"The assessor, not being a Deputy Collector empowered to make assessments under this Act, shall deliver or transmit the said abstract and lists, signed by himself, together with the returns received by him, to the Collector or Commissioners."

MR. SCONCE moved the omission of the words "not being a Deputy Collector, empowered to make assessments under this Act."

Agreed to.

MR. SCONCE moved the addition of the following words to the Section:—

"If the assessor be empowered to make assessments under Section XXII of this Act, he shall also deliver or transmit to the Collector an abstract of the assessments so made by him."

The motion was carried, and the Section as amended then passed.

Section LV provided as follows:—

"If, on the day appointed, the person shall appear, he shall be heard before the Collector or Commissioners sitting with closed doors, and the assessor shall also, if required, attend. The Collector or Commissioners shall hear the statement of the person, and may inspect any books or papers which he shall voluntarily tender, or question any witness whom he shall produce, but they shall not require the person chargeable to produce any books or proofs besides those which he may choose to tender. An oath or affirmation may be administered to any witness produced by the person, but the person himself shall not be sworn, unless he shall desire it. After such hearing the Collector or Commissioners shall modify, abate, or confirm, the surcharge or charge upon such person, or shall, if they think fit, postpone the case for further hearing. After finally hearing the case, he or they shall decide the amount in which the person ought to be charged or surcharged, and shall assess him in such amount. Such decision and assessment shall be final, subject only to such surcharge in the case of fraud as provided in this Act."

MR. SCONCE moved the omission of all the words from the words "After such hearing" to the end of the Section, and the substitution of the following:—

"After such hearing or after any further hearing for which the case may be adjourned, the Collector or Commissioners shall assess the amount at which the person aforesaid shall be charged. Such assessment, if made by the Collector, may be revised, on the application of the person assessed, by the authorities to whom the Collector in matters relating to land revenue is subordinate, under such rules as those authorities are by law competent to prescribe. The assessment, if made by the Commissioners, shall be final. In all cases the assessment shall be subject to any surcharge that may be imposed in case of fraud, as hereinafter provided."

He said that the object of this amendment was to provide that assessments made by Collectors should be open to appeal. He need hardly say that in the towns of many districts people drawing large incomes would be subject to be surcharged, and if the Collector who would assess them was to be allowed to exercise his own judgment in surcharging where he believed incomes to be understated, it seemed to him (Mr. Sconce) highly essential that the authority proposed to be vested in the Collector should be subject to some supervision. He might add that the Lieutenant-Governor of Bengal entirely agreed in this proposition. In a letter which he had received from the Secretary to the Government of Bengal, it was observed:—

"With reference to your letter of the 13th ultimo, No. 42, I am directed to state on the first of the two points on which you ask the opinion of the Lieutenant-Governor, namely, the agency by which assessments are to be made under the Income Tax Act, that the Lieutenant-Governor agrees with you in opinion that the Collector's orders ought not, in all cases, to be conclusive and final, and if they are made so, he anticipates much inequality and dissatisfaction, many glaring mistakes and great discredit to Government. The right of appeal should, he thinks, remain in these cases exactly as in all others. The Lieutenant-Governor's late experience of the working of the Indigo Act is, I am to observe, very unfavorable to the general conduct of cases wherein there can be no appeal."

The terms of the amendment which he ventured to submit to the Council were drawn conformably to the Revenue law in Bengal, and would permit the superior revenue authorities to revise the proceedings of their subordinates in these as in other cases. It would be observed that it was not intended by the amendment to touch the assessments of Collectors in Presidency Towns, where the assessments would be made by two or more Commissioners.

SIR MORDAUNT WELLS said, he entertained a very strong objection to the amendment proposed by the Honorable Member for Bengal. If there was one system in the Judicial administration of India, which was more scouted than another, it was the present system of appeals in the Mofussil Courts. A great number of evils sprang from it, and nothing was more desired both by Natives and Europeans than

the abolition of the existing system of appeals. Appeals as at present carried on, on questions of fact, were positively a curse to the country. The Collector was an Officer occupying a position of great responsibility, and his authority should be upheld. He (Sir Mordaunt Wells) was more inclined to place confidence in the decisions of Collectors acquainted as they were with the people of their districts, than in those of a Board composed of members who perhaps possessed no local knowledge. If appeals were allowed and one of them succeeded, the native character was such that every one would appeal, and it would be impossible to collect the tax. He for one should be sorry to see the authority of the Collector diminished in any way by this Act.

MR. WILSON said, he did not understand the wish of the Lieutenant-Governor to be to diminish in any way the authority of the Collector as it now stood. The only object of the amendment was to place this revenue on the same footing as any other revenue; and he should not wish to take upon himself the responsibility of saying that a recommendation coming from so high an authority as the Lieutenant-Governor on such a matter should not be attended to. He entirely agreed with his Honorable and learned friend as to the inconvenience arising from the system of appeals, but he thought that such a consideration should give way to that of justice. It must be remembered that decisions of the Collectors were simply proposed to be made subject to revision under the same rules as in other revenue matters, which he supposed were very stringent and precise. The Lieutenant-Governor was of opinion, from the experience which he had had of the working of the late Indigo Act, that great injustice would be done by refusing appeals in any case. You might stifle appeals if you wished, but you could not get over dissatisfaction. He (Mr. Wilson) saw no reason why the revenue to be raised by this Bill should be placed on a different footing from any other revenue.

MR. FORBES said, he was not opposed to the system of appeals generally, but the difficulty he felt with regard to the question now before the Council, was the difference of circumstances in the several Presidencies. For instance, in the Southern Presidency, the whole of the appeals would be concentrated in one single Board. There was no intermediate step between Collectors and the Board of Revenue, such as existed in Bengal. If a Collector received promotion, it was to take his seat at once as one of the three Members of the Board of Revenue. It was this circumstance which made the Collectors of Madras a superior set of Officers, that is, more experienced and consequently more fit to be trusted, than the Collectors in any of the other Presidencies. Although, therefore, some inconvenience was likely to arise from the amendment, it was an inconvenience which, he quite agreed with the Right Honorable gentleman, ought not to be an impediment in the way of substantial justice.

SIR MORDAUNT WELLS said that the remarks of the Honorable Member for Madras tended rather to strengthen his (Sir Mordaunt Wells') view of the case. The Honorable Member had shown the practical difficulty of carrying out the amendment, as, in permitting appeals, we should, in fact, be doing an injustice to officers entrusted with most important duties. If an appeal were allowed in one case, there would be an appeal in almost every case, and then there would be appeals in arrears for two years, as in the Sudder Court. Delay in collecting the Income Tax would be highly detrimental. But why should an appeal be allowed in such cases? There was no reason adduced for it. The parties who would come under the Income Tax would in certain districts do everything in their power to embarrass the Government; and he (Sir Mordaunt Wells) strongly urged on the Government not to give them a right to appeal from the decision of the Collector.

MR. HARINGTON said, he had a few remarks to make, which would

probably remove the objections entertained by the Honorable and learned Judge to the motion of the Honorable Member for Bengal The amendment did not propose to give an appeal as a right. The words used were "*may* be revised," not "*shall* be revised" The rule was therefore permissive only, not imperative. Under the Revenue Rules to which reference had been made, the Commissioner might at once reject an application for revision, if no sufficient grounds were shown in support of it. He (Mr Harington) quite agreed with the Right Hono able gentleman that, in the face of the very decided opinion expressed by the Lieutenant-Governor of Bengal, who, it was generally believed, was by no means favorable to appeals, they ought not to reject the amendment proposed on his recommendation by the Honorable Member for Bengal

MR SCONCE said, his Honorable and learned friend had pronounced appeals to be "curses" Speaking in the same broad sense he (Mr Sconce) would call them "blessings," for, if we had no appeals, we had better have no Courts of first instance. He must confess he had a great leaning against absolute power, and he should do all he could to limit it.

THE CHAIRMAN said, two cases appeared to him to be provided for in the Bill. If a person did not make a return, the Collector had the power to assess him in any sum which appeared to him fair, and as a penalty for not making the return, he was liable to a fine of two hundred Rupees. In case he made a false return, the Collector either surcharged him, or, if he considered there was sufficient proof to convict the party of having wilfully made a false return, then he sent him before a Magistrate, who had the power of making him pay three times the amount at which he ought to have been assessed, and in addition inflict on him a fine of five hundred Rupees. Now it appeared to him (the Chairman) that the penalty for not making a return was very small, for a person would rather pay two hundred Rupees than run the risk of making a false return, for which he would be liable to pay three times the amount at which he would be assessed, besides a fine of five hundred Rupees. For instance, a person whose income was one thousand Rupees a year, would care very little to pay a fine of two hundred Rupees for not making his return, and would always omit to make it. He therefore thought the penalty ought to be severer than provided for by the Section Then again a person was not bound to produce his books before the Collector if the Assessor had overcharged him. All he had to do was to appear before the Collector with a number of witnesses to prove that he had been overcharged, but the party himself would not be put on his oath unless he wished it. Then, with regard to appeals, he (the Chairman) did not see why a Collector should not be entrusted to decide what amount he should surcharge a person, when the Magistrate had the power, in case of a false return, to make the person pay treble the amount, besides a fine of five hundred Rupees. How was the Magistrate to know more than the Collector what was the treble amount.

MR WILSON said that the reason why parties were not required to produce any books or papers was that the Commissioner had the power to fix the assessment at what he conceived proper, and it lay on the party himself to produce evidence, if he pleased, to reduce that assessment.

THE CHAIRMAN thought that this would give encouragment to the fabrication of accounts

After some further discussion the consideration of the Bill was postponed, and the Council resumed its sitting.

The Council adjourned at 10 o'clock, on the Motion of Sir Bartle Frere, till to-morrow morning, at 7 o'clock.

Wednesday Morning, July 11, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E Frere,	H Forbes, Esq.,
Right Hon'ble J. Wilson,	A Sconce, Esq., and
H B Harington, Esq.,	Hon'ble Sir M L. Wells

INCOME TAX.

The Order of the Day being read for the adjourned Committee of the whole

Council on the Bill "for imposing Duties on Profits, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. HARINGTON said that, at the time the Committee adjourned yesterday, they were discussing an amendment proposed by the Honorable Member for Bengal in Section LV of the Bill, the object of which was to allow a revision by the superior revenue authorities of certain orders passed by the Collectors. It had since occurred to him that it would greatly reduce the number of applications for the revision proposed to be allowed, and thus to some extent remove the objections which were felt by some Honorable Members to such revision, if, in accordance with a suggestion which had fallen from the Chair yesterday, some words were added to the preceding Section, limiting the revision in cases falling under Section XLVI of the Bill, and he begged therefore to propose the addition of the following Clause to Section LIV—

"But no person who shall have been charged on an assessment made under Section XLVII shall be heard against such charge if he shall have been served with a notice in the manner prescribed by this Act, unless he can satisfy the Collector or Commissioners that his failure to make the return within the period allowed in such notice was not unavoidable."

Agreed to.

The adjourned debate on Mr. Sconce's Motion to amend Section LV was resumed.

After some conversation, the Motion was by leave withdrawn; and the Section was passed after an amendment, on the Motion of the Chairman, the effect of which was to render the decision and assessment of the Collector or Commissioners under that Section final, subject not only to surcharge in case of fraud, but also to such revision as might be provided in the Act.

THE CHAIRMAN then moved the addition of the following Clauses to the above Section:—

"*Clause* 2. For the purpose of correcting any mistake in law or for deciding any point specially referred by the Collector, such assessment, if made by the Collector, may be revised on the application of the person assessed by the authorities to whom the Collector in matters relating to the land revenue is subordinate, if they think fit so to do, under such rules as those authorities shall from time to time prescribe.

"*Clause* 3.—Before any revision shall be made, the applicant shall deposit with the revising authorities such amount as they may require to be deposited for the purpose of covering costs as hereinafter mentioned.

"*Clause* 4.—Pending the revision, the applicant shall be liable to pay the Duty aforesaid as if no such application had been made, subject to a refund of such amount as the revising authorities shall direct

"*Clause* 5.—If the revising authorities consider the application for the revision to have been frivolous or vexatious, they may order the applicant to pay such amount of costs as they may think reasonable, and such amount shall be retained out of the amount deposited on account of costs."

SIR MORDAUNT WELLS said, he had no hesitation in saying that the amendment of his Honorable and learned friend entirely met his objections, as it was calculated to strengthen the hands of the Collector.

The Clauses were severally carried, and the Section as amended then passed.

Section LIX provided that assessments made by the Collector or Special Commissioners should be final, subject only to surcharge in case of fraud.

MR. SCONCE moved the omission of this Section and the substitution of the following:—

"If the person surcharged shall object to the assessment, such assessment, if made by the Collector, may be revised as provided in Section LV of this Act; or if made by a Special Commissioner, may be revised by any number, not less than two, of the Commissioners aforesaid."

In proposing the amendment, he said that it would suit the change made by the previous amendment.

MR. WILSON said, he thought there should be no appeal at all in cases where persons of their own accord applied to be assessed by the Collector or Special Commissioner for the sake of secrecy. Having made their election, they should be obliged to abide by it.

After some further discussion, the Motion was put and negatived.

A verbal amendment was carried in Section XXIV, on the Motion of Mr. Wilson, the effect of which was to

enable the Government, wherever they thought necessary, to appoint Military Officers and other Europeans, besides Deputy Collectors, to act as assessors.

Sections XCIV and XCV were transposed so as to stand after Section LXIII

MR WILSON moved the omission of Rule 35 of Section XCVII as being already provided for by Rules 31 and 32 of the same Section.

Agreed to

Section CCXVIII was passed after a verbal amendment

Sections CCXIX and CCXX were passed after amendments, the effect of which was to increase the penalty for wilfully neglecting or refusing to deliver lists, returns, &c.

Section CXXI (which proposed to authorize the Collector or Commissioners to settle differences between parties respecting deductions to be made on account of Duties) was omitted on the Motion of Sir Barnes Peacock, who thought that parties should be left to settle such matters between themselves.

MR WILSON then moved that the Bill be reprinted as amended.

Agreed to.

The consideration of the Bill was adjourned and the Council resumed its sitting.

The Council adjourned at 10 o'clock, on the Motion of Sir Bartle Frere, till to-morrow morning at 7 o'clock.

Thursday, July 12, 1860.

No Member of the Council was this day present.

Saturday, July 14, 1860

PRESENT

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E Frere,	H Forbes, Esq.,
Right Hon'ble J Wilson,	A. Sconce, Esq., and
H. B Harington, Esq,	Hon'ble Sir M. L. Wells.

PUBLIC CONVEYANCES.

THE CLERK presented a Petition from the Inhabitants of Calcutta concerning the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca"

MR SCONCE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

INCOME TAX

THE CLERK also presented a Petition from Proprietors of permanently settled estates in Bengal, Behar and Orissa, against the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

PAPER CURRENCY.

THE CLERK reported to the Council that he had received, by transfer from the Financial Department, a copy of a Despatch from the Secretary of State, on the subject of the introduction of a Paper Currency for India

MR WILSON moved that the above communication be printed

Agreed to.

DEBTORS AND CREDITORS.

The Order of the Day being read for the second reading of the Bill "for facilitating arrangements between Debtors and Creditors"—

SIR MORDAUNT WELLS said, he had already so fully explained the objects of this Bill, that he would not trouble the Council with any further observations in respect to it. He would only mention that the Bill, as it now stood, applied only to Bengal, and as he thought it desirable that its provisions should be extended to the other Presidencies also, he proposed, before moving the second reading of the Bill, that the words "at Fort St George or at Bombay" be inserted after the word "Bengal," in the 10th line of Section I

THE VICE-PRESIDENT, in putting the question, said that he thought it very desirable that the other Presidencies should have the benefit of

this law, or that at least they should be allowed an opportunity of expressing their views on the subject. The addition of the words proposed, before the second reading, would obviate the necessity hereafter of a republication of the Bill.

The Motion was put and carried.

SIR MORDAUNT WELLS then moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

ARMS AND AMMUNITION.

The Order of the Day being read for the third reading of the Bill "relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases"—

SIR BARTLE FRERE moved that the Bill be re-committed to a Committee of the whole Council, to enable him to propose the introduction of a Clause relative to the duration of the Act.

THE VICE-PRESIDENT supported the motion, by saying that he also had some amendments to propose in the Bill.

The Motion was carried, and the Council accordingly resolved itself into a Committee for the further consideration of the Bill.

Several trifling amendments were made in Sections VII, VIII, IX, X, and XVIII.

In Section XXI, the word "lead" was inserted after the words "Military Stores" (on the motion of the Chairman) in consequence of a doubt that had arisen on the part of the Government of Bombay as to whether they had the power, under Act XXVIII of 1857, of prohibiting the transport of that article.

THE CHAIRMAN moved the introduction of the following new Section after Section XXII, which prescribed the penalty for prohibited transport :—

"Nothing in the last two preceding Sections shall extend to arms, percussion-caps, gunpowder, and other ammunition transported by any person in reasonable quantities for his own private use in any District or place not ordered or liable to be disarmed under Section XXXII of this Act."

Agreed to.

Section XXIX was passed after an amendment, (on the motion of the Chairman,) requiring a specification in the license of not only "the number of the followers" of a person licensed to carry arms, but also "the number and description of arms to be carried by each of such followers."

THE CHAIRMAN thought that it was of great importance that the Council should understand what was meant by the words "without danger to the public peace" in Section XXX. Was it meant that a person might be disarmed in consequence of some overt act which he might commit, or because he might be considered a dangerous subject on account of his belonging to a particular class? Now, a definition was given by Section XXIV, which authorized a Magistrate or other officer to disarm a person going armed or carrying arms, "if, in the judgment of such Magistrate or other officer as aforesaid, it is dangerous to the public peace to allow such person to go armed or to carry arms". But what he wished to know was whether the words "dangerous to the public peace" meant a drunken man going armed, or a man who committed some overt act, or whether they referred to a person belonging to a class which the Magistrate considered disloyal. If the Section applied to individuals only who might be guilty of some overt act, the question arose whether, under the exemptions contained in Section XXVI, Police and Revenue Officers were to be allowed to go armed, though they might be dangerous subjects. It appeared to him that the Bill was not intended for the purpose of disarming a drunken soldier or sailor, nor with reference to any overt act committed by individuals, but with reference to classes. Seeing therefore that an exemption had been made in favor of classes, he saw no reason why a similar exemption should not be made in favor of Europeans, Americans, and Eurasians. But, as his view of the case might not be

correct, he begged to know what was meant by the words in question.

SIR BARTLE FRERE explained that, under the general Regulations, ample powers were given to the executive authorities to disarm any person under such circumstances as those referred to by the Honorable and learned Chairman. The object of the exemption was merely to save the trouble and inconvenience which were likely to arise if any restrictions were placed on classes who were obliged to carry arms in discharge of their duties, by order of their superiors. If any such Officer were to be found making an improper use of his arms, the Magistrate had the power, without waiting for orders, to disarm him at once. He (Sir Bartle Frere) did not think that any sane Magistrate would stand by and look on quietly at a Police or Revenue Officer committing an assault on a person with either his sword or his gun.

SIR MORDAUNT WELLS said that he, as a lawyer and a judge, was quite satisfied that the general law of the land was sufficient to provide for the cases referred to, and that the Police had full power to disarm all persons dangerous to the public peace. That being the case, he liked to know what necessity there was for passing another law, when the present law was strong enough and fully answered the purpose for which it was intended, as the Honorable Member of Government (Sir Bartle Frere) had himself admitted. This appeared to him (Sir Mordaunt Wells) another strong objection to the proposed measure, namely, that it was interfering with the general law, and was therefore perfectly useless. It was therefore his intention to propose a Clause, the effect of which would be to exempt Europeans as a body, and to impose on the Executive Government the necessity of singling out those Europeans whom they considered unfit to be trusted with arms.

THE CHAIRMAN said, he was not sure that those Honorable Members, who voted the other day against his motion for the exemption of Europeans, did not do so on the ground that the exemption would include individuals who might be considered dangerous in consequence of some overt act. But as it appeared that the general law was sufficient to guard against acts committed by individuals, and in order to allow Honorable Members the opportunity of correcting a mistake into which they might have fallen, he would move again the introduction of the words "Europeans, Americans, and Eurasians" in the exempting Section XXVI. He saw no reason why these classes should not be exempted when Police and Revenue Officers, Soldiers and Sailors, members of Volunteer Corps, and others were to be exempted. Was it because the Government were afraid of giving offence to the Natives that objection was made to the exemption of Europeans?

SIR BARTLE FRERE said, he was not going to re-open this discussion, but he must protest against the inference of the Honorable and learned Chairman that the Government had been induced to oppose the exemption of Europeans, Americans, and Eurasians, because they were afraid to give offence to the Natives. The exemption of soldiers, sailors, &c., from the necessity of taking out a license was a pure matter of convenience. If there was any objection to the exemption, let it be omitted.

SIR MORDAUNT WELLS was astonished to hear that a Government, which intended to make every loyal man a special constable, would require him to take out a license before he was made one. He thought it most extraordinary that the Government should tell them that, when their services were required to assist the State in the event of an exigency, they would then be exempted; otherwise they would have to go to a Magistrate and ask him for a license. Government would entrust them during such an emergency, but not at other times. It was like telling them—"We have no doubt of your loyalty, and we are quite convinced that you would not make an improper use of your arms; but we cannot help it; we are obliged to do it, as it would be invidious to make a distinction between you and the

Natives; you ought therefore to submit to it patiently."

MR. HARINGTON said, in rising to address the Council at this time it was not his purpose to go into the much vexed question, as to whether Europeans and some other classes should be exempted, by express words, from the operation of the Section to which the Committee had gone back. He considered that question to have been finally determined in the negative, and he was not prepared to re-open it, or to give a different vote to-day from that which he had formerly given. But he must observe that the classes specially mentioned in Section XXVI did not stand on the same footing as the classes now proposed to be exempted. They were public Officers, and were required to carry arms in the execution of their duty. As regarded the difficulties into which the Honorable and learned Judge (Sir Mordaunt Wells) thought they would be led if they did not grant the exemption advocated by him, he (Mr. Harington) would content himself with opposing to what had been said on this subject the experience of the period during which the present law had been in force. In that interval, so far as he was aware, no such inconvenience or difficulty as that anticipated had been experienced.

MR. SCONCE said, it seemed to him that there was a material difference between Section XXIV and Section XXXI. Section XXXI was a general disarming Section, and was to be put in force in whatever place it might be proclaimed or where disarming was already in operation, and any person might be disarmed without reference to his being a dangerous person or not. Section XXIV, however, was altogether of a different character. According to that Section any person who had a license, whether he was a dangerous person or not, could not be disarmed. If he had no license, and it was considered that his possession of arms was dangerous to the public peace, he might be disarmed. He (Mr. Sconce) therefore thought that any Magistrate, before he disarmed a European who had not taken out a license, could not do so, unless he was able to say that the party was endangering the public safety. If the Magistrate disarmed a European without knowing or without being satisfied that he was a dangerous subject, he did so at his own peril. Section XXXI, however, as he had already stated, was a general disarming Section, and he was opposed to it altogether. The principle of that Section was wholly inapplicable to Europeans whose loyalty was not to be suspected. He thought it necessary to explain this distinction between the two Sections, to account for the difference between the vote which he gave on the last occasion with respect to Section XXXI, and the vote which he intended to give on the present occasion with respect to Section XXIV.

SIR BARTLE FRERE said that, as to danger to the public peace, you must leave it to the discretion of the Magistrate to judge whether individuals or classes were dangerous or not. Every Magistrate must judge for himself. He was not prepared to say that, if a Magistrate founded his judgment on the class to which a man might belong, he would exercise an unwise or unconscientious discretion.

SIR MORDAUNT WELLS asked if it was intended by this Bill to entrust a Magistrate of seven and eight years' standing in an Indigo district with the power of deciding whether or not the planters residing there were dangerous men, and to leave them disarmed and helpless, a small scattered body, in the midst of hundreds and thousands of people hostile to them. If so, he thought that the consequences would be most fearful. A Magistrate might entertain strong prejudices against European planters, and might avail himself of the power conferred on him by this Act by disarming them, whether they were dangerous subjects or not. If, however, the power was not contemplated to be put in force against Europeans, why then arm the Magistrate with a discretion to do what you do not intend him to do? Was it not better therefore to leave him to the general law which empowered him to disarm any individual who, by his conduct, had shown himself dangerous the public peace?

SIR BARTLE FRERE could only say that, in such a case as that supposed by the Honorable and learned Judge, the Government would in all probability immediately remove the Magistrate, and it would, he thought be a question whether such a man ought not immediately to be sent to the Lunatic Asylum.

MR. WILSON said, there appeared to be some misapprehension with regard to this matter. The difficulty, he thought, had arisen by the omission of Section XXIV of the Bill as amended by the Select Committee, and the substitution of quite a different Section. Now, what was Clause 24 which had been struck out? [Mr. Wilson here read the Section.] This Clause, he went on to say, made no distinction between a person who was dangerous to the public peace, and a person who was not. But it absolutely laid down that no person whatever should carry arms without a license. It then stated that, if any person carried arms without a license, he was liable to be punished with a fine not exceeding one hundred Rupees. And then it further went on to say that any person, whether dangerous or not, carrying arms without a license, might be disarmed. That being so, it became necessary to make an exemption in favor of those persons who must necessarily, in the performance of their duty, carry arms. But the instant you struck that Clause out, and adopted a Clause totally different in its character, providing that no person should be allowed to go armed if, in the judgment of the Magistrate, it was considered dangerous to the public peace, the exemption became unnecessary. As to whether the words "dangerous to the public peace" were applicable to classes or to individuals, he (Mr. Wilson) should say to both, according to the discretion of the disarming officer. A person would not be disarmed, unless he was considered dangerous to the public peace. He (Mr. Wilson) remembered a remark made by his Honorable and learned friend (Sir Mordaunt Wells) that this Clause was the kernel of the Act of 1857. The Clause was adopted on the suggestion of his Honorable and learned friend, so that, after having adopted it, the retention of the exempting Clause became unnecessary, and he (Mr. Wilson) had no objection whatever to see it omitted.

SIR MORDAUNT WELLS begged to remind his Right Honorable friend that, after he had voted in favor of the Clause referred to, a new state of circumstances had arisen He would repeat that, at the time he said that he was quite willing to accept the Act of 1857, he had not seen the opinions expressed by the Lieutenant-Governor of the North-Western Provinces and the several Officers there, who strongly urged the necessity of exempting Europeans. The moment he saw those papers, he felt it his duty to declare at once his determination of taking his stand on that recorded evidence.

MR WILSON said he did not wish, by anything he had said, to bind his Honorable and learned friend to any opinion previously expressed by him. What he (Mr. Wilson) had mentioned had all n from him only by way of explanation. He thought that every gentleman had a perfect right to change his mind as often as he pleased. He would only add, however, that Section XXIV had nothing whatever to do with the North-Western Provinces, as the districts in those Provinces were proclaimed districts, and he considered them altogether exceptional.

MR. HARINGTON said, the Honorable and learned Judge (Sir Mordaunt Wells) had alluded to the reports on this Bill which had been received from the North-Western Provinces, and had stated that all the Magistrates whose signatures were attached to those reports had given it as their opinion that Europeans should be expressly exempted from the operation of the Bill. But this was scarcely a strictly accurate account of the reports in question, for, on looking over those reports, he (Mr. Haringtn) found that of twenty-one officers whose opinions were expressed therein, fifteen had given no opinion of the nature mentioned. No doubt, amongst the officers who would exempt Europeans was the highest

authority in the North-Western Provinces, whose opinion was unquestionably entitled to the greatest respect, and must always carry great weight; but he (Mr. Harington) could not overlook the fact that the Governments of Madras, Bombay, and Bengal had not recommended any exemption in favor of Europeans, and although the present Act contained no such exemption, he had never heard that that Act had been objected to on the ground of this omission either in this country or by the authorities at home; and he thought that what he had just mentioned was deserving of consideration. He might also observe, that amongst the officers who had given no opinion in favor of the exemption of Europeans were two of the very Commissioners whose reports the Honorable and learned Judge had specially alluded to on a former occasion, namely, the Commissioners of Meerut and Agra.

SIR MORDAUNT WELLS said, his Honorable friend appeared to forget that the officers in the North-Western Provinces had not been specially called upon for a report, as to whether Europeans should or should not be exempted from the operation of the Bill, or from any part of it. The opinions had been expressed spontaneously, and there was not one of those officers who said that Europeans ought to be included.

MR. HARINGTON admitted that such was the case, but he went on to say that the officers who had given no opinion in favor of the exemption of Europeans had the same opportunity of expressing such opinion as the few officers who had expressly declared their opinion that Europeans should be exempted. He would remind the Honorable and learned Judge that his predecessor in this Council had distinctly raised the question of the exemption of Europeans in the debate on the motion for the second reading of the Bill. What was said by the Honorable and learned Judge on that occasion was known to all the country, and every officer who felt so disposed had every opportunity of expressing an opinion on the subject.

THE CHAIRMAN said, it appeared to him that considerable difficulty would arise if we were now to omit the exempting Clause, as it would be giving great powers to Magistrates. If a Magistrate had the power of disarming every person (no matter if he were a Civilian or a Military man) whom he considered dangerous to the public peace, he might disarm a whole Military Police Battalion of a district. During the mutiny in 1857, it was considered necessary to disarm every sepoy at Barrackpore, but surely such a power should not be vested in a Magistrate, which would be the case if the exemption Clause proposed to be struck out were omitted. The Magistrate might say that he would take away their arms, not because they had committed any overt act, but because he knew they belonged to a particular class against whom he entertained strong suspicions It appeared to him (the Chairman) that larger powers were proposed to be invested in a Police Commissioner or a Magistrate than could be exercised by a Commissioner of a Province without the sanction of the Governor-General. If he (the Chairman) were a Magistrate in certain districts, he might consider it dangerous to the public peace to allow any Natives to be armed, whilst the Magistrate of the adjoining district might be of a very different opinion. What a scene would there not be if such a state of things were allowed to occur? One could hardly believe that a Magistrate could be invested with such a power as to give a license to whom he pleased, to exempt whom he pleased from the Act, and to disarm troops or the Military Police. Was the Council prepared to sanction such a power without an appeal to any one? If they were, they would be taking upon themselves a heavier responsibility than he was willing to do. Then, again, if it were to be said that it was necessary that Police and Revenue Officers should be exempted, he (the Chairman) would say that as great a necessity existed for the exemption of Europeans. It was said, however, that, although the

Magistrates were to be invested with such powers, they would not exercise them. But was it fair or proper to give Magistrates extraordinary powers, and at the same time to expect them not to exercise them—to tell a Magistrate to exercise his own judgment, and if he acted upon that judgment, to tell him that he had done wrong—to give a Magistrate the power to act according to his judgment and then to dismiss or remove him for the manner in which he might exercise it? If Section XXIV applied only to individuals who might be guilty of acts of violence, the Section was not necessary, for under the existing law the Magistrate might apprehend any person who was about to use arms in breach of the public peace. If it did apply to individuals not to a particular class, then, if a man were to run wild with a sword or pistol in his hand, or to run after his wife to shoot her, the Magistrate could not disarm him under this Act if he happened to be a soldier or a Police officer. He (the Chairman) had stated in an earlier stage of the debate that, as some Honorable Members might have voted against him on the last occasion under the mis-apprehension that the words "dangerous to the public peace" applied merely to individuals and not to classes, he would again move his original amendment that Europeans, Americans, and Eurasians be exempted.

The Motion being put, the Council divided:—

Ayes 2	*Noes* 7.
Sir Mordaunt Wells.	Mr. Sconce.
The Chairman.	Mr. Forbes.
	Mr. Harington.
	Mr. Wilson.
	Sir Bartle Frere.

So the Motion was negatived.

Section XXX was then passed after some verbal amendments.

After some trifling amendments in Clauses 1 and 2 of Section XXXI—

MR. HARINGTON moved the introduction of the following after Clause 2:—

"Licenses to have in possession any arms of the description mentioned in Section VI, or percussion caps, sulphur, gunpowder or other ammunition may be granted by any Magistrate or other Officer specially authorized by the Governor-General of India in Council or the local Government to grant such licenses, and may be revoked or suspended by any officer authorized to grant such licenses whenever he may think fit. The license shall be in the form prescribed by the Governor-General of India in Council, or by the local Government"

Agreed to

THE CHAIRMAN then moved that Section XXV, relating to licenses to travellers to carry arms, be transposed so as to stand after the above Clause.

Agreed to.

THE CHAIRMAN said, he would now call the attention of the Council as to the effect of Section XXXI. As it now stood, any person travelling on the Grand Trunk Road through any of the districts of the North-Western Provinces which had been ordered to be disarmed, who might happen to carry a revolver in his carriage, was liable to be disarmed if he had no license, and sentenced to two years' imprisonment, with or without hard labor, and also to a fine of 1,000 Rupees. Unless some exemption was made, there would be no escaping the penalty.

SIR MORDAUNT WELLS said, he thought that his amendment would meet the case supposed by the Honorable and learned Chairman.

SIR MORDAUNT WELLS' amendment was then read as follows:—

"The provisions of this Section shall not extend to any European, American, or Eurasian, unless the same shall be specially extended to them by Proclamation to be issued by the Governor-General of India in Council, as far as relates to the territories under their respective administration, by the Executive Government of a Presidency, or by a Lieutenant-Governor, or by a Chief or other Commissioner of a Province with the sanction of the Governor-General in Council."

SIR BARTLE FRERE would only observe that the old objection still remained, namely, that the amendment did not go far enough. He saw no reason why it should stop at the exemption of loyal Europeans, and exclude mention altogether of loyal Natives.

MR. HARINGTON pointed out that as the Bill would apply to all classes, any inconvenience which would be felt by Europeans and any injustice which would be done to them by the operation of the Clause which had been introduced on the Motion of the Honorable and learned Chairman would be shared in equally by the Natives, and if, by reason of the injustice noticed by the Honorable and learned Chairman as certain to result from the sudden introduction of a law which declared that to be penal and punishable with fine and imprisonment, which before was not so punishable, it was right to exempt Europeans, it must be equally right to exempt all other classes. That which was unjust in the case of Europeans would be equally unjust in the case of the Natives. What had fallen from the Honorable and learned Chairman seemed to furnish a strong argument in favor of omitting the Clause altogether. If, however, it was determined to retain the Clause, he (Mr. Harington) considered that ample power was given to the local authorities in Clause 6 to exempt all persons who, on whatever ground, might be proper objects of exemption, and preferring the Clause as it stood, he should vote against the proposed amendment of it.

MR. SCONCE said, he would as before support the amendment. The whole of Section XXXI made him wince, and he was opposed to it altogether. As the Honorable Member for the North-Western Provinces had said, the hardship and inconvenience would be equally severe to Europeans and Natives. The penal provision of the Section was of extreme severity, and would enable the executive to scourge the people. He (Mr. Sconce) would rather not have the Section at all. But as that could not be, he accepted the amendment as concerned Europeans.

Mr. WILSON said, he thought the inconvenience arose from our having continued the old law in operation and added a new principle to the continuance law. When the Honorable and learned Chairman proposed the amendment which had involved them into this difficulty, he (Mr. Wilson) supported it, because he considered it was a Bill to meet a great public emergency. No doubt there would be some hardship and inconsistency if they were to apply a new punishment to an old offence. What he would propose therefore to add were words to the effect, that until the 1st of October the penalty Clause of this Section should not be in force. That would afford ample opportunity to people to take out licenses. They would then have all the advantage, and would not be put to any inconvenience. No doubt persons travelling on the Grand Trunk Road would be subject to great inconvenience, but the inconvenience would be as great to Native Princes and others who would also be searched. For instance, the Rajah of Koopertalla, the Rajah of Putteahla, and Scindia, who intended to pay a visit to Calcutta next autumn, would have to undergo the same ordeal—men to whose personal courage and loyalty we were indebted for the fall of Delhi. Supposing they were fined and imprisoned, would it not be just as hard? If we were to make an exemption, we ought to make it general; and if that could not be done, all we could do would be to postpone the operation of the Act for a few months

THE CHAIRMAN said, he would have no objection at all to postpone the operation of the penalty Clause until persons had time to take out a license. He thought that those persons who in the disarmed districts had given notice of their arms, and who had been allowed to keep them under Act XXVIII of 1857, ought to have notice. Before the provisions of the new Section were extended to the North-Western Provinces, the Act should be published, in order that persons might have notice of it. It would be unfair to subject them to this Section without giving them such notice. If the Right Honorable Gentleman intended to make any motion, he would put it.

MR WILSON then moved the substitution of "from the 1st day of October 1860" for "from the passing of this Act" in Clause 4.

Agreed to.

SIR MORDAUNT WELLS' amendment was then proposed from the Chair.

THE CHAIRMAN said, he would ask the Council whether, although time was granted for parties to take out licenses, Europeans would have the same facility in obtaining exemptions from the Act, as Native Princes or Rajahs or other Natives of high caste and family would have. There was a great distinction between having to comply with the Act and taking out a license, and obtaining an exemption from the Act. If John Smith or Brown were to go and ask the Government for exemption, he would probably be referred to the Commissioner of Police or the Magistrate. The Government might tell him—"We don't know you; you had better apply to the Commissioner of Police if you want a license;" whereas an exemption would probably be granted in favor of a wealthy Native, or to one of high caste, who might think it derogatory to apply to the Magistrate or Commissioner of Police for a license. It was well known that many natives considered it derogatory to appear even in a Court of Justice. If a respectable European gentleman or Merchant wanted to travel Up-country, he would think it derogatory to have to apply to a Magistrate or to the Commissioner of Police for a license to carry a revolver. It would cast a doubt upon his loyalty to require him to do so. Was it right that we should place him in that humiliating position, when the high caste Native would probably obtain an exemption from the Act.

MR WILSON said, in voting against this amendment, he wished it to be understood that he was not voting for a different issue from that which had already been decided by the Council. The words were only transposed, but they were still the same words. His Honorable and learned friend had spoken of the inconvenience of taking out a license. If it was to be a matter of convenience, he hoped he would not remain in the Council to hear of a distinction being established between loyal Europeans and loyal Natives on such a ground. They should consider that Natives to a large extent were equally loyal as Europeans. If we were to measure inconvenience by comparative numbers of the two classes, what was the result? The total number of Europeans was much less than the total number of loyal Natives. He could not give his vote to a measure which would once and for ever stamp that Bill with inequality and one-sided legislation. Where were we to draw the line? Should not the Natives lay claim to the same exemptions? Great numbers of them were fully entitled to the same privilege, particularly those who remained loyal under very trying circumstances, and who had proved their loyalty. Were we not to look to the convenience of these people? On whatever side he looked at the question, it seemed to him it would be quite impolitic to make any distinction. He did not for a moment venture to say that Europeans should be deprived of their privileges or their liberty. He claimed to hold as high an opinion of that class as any person could hold; but in passing laws for so many millions, it was impossible we could take into consideration the superiority of any class. He thought it was the duty of the Government to do its best to encourage and promote the advancement in India of European and Anglo-Saxon civilization, and that was his policy. He knew that without Englishmen India would be a wilderness, and were it not for them, the country would not be what it was. He would give every encouragement to English settlers and capitalists, as on them depended the prosperity of the country. But at the same time we could not be expected to sacrifice the interests of the Natives for the convenience of Europeans; in providing for the one we should take care that we do not neglect the other.

SIR MORDAUNT WELLS said, he entirely differed from the Right Honorable Member who had now opened the whole question. We could not close our eyes to the fact that, by passing this Act, we were subjecting Europeans to a highly penal Clause. He did not think it was just to subject them to such a Clause as

the one we were now discussing. If a European was proceeding up country from Calcutta, and happened to go through a proclaimed district, was he to be subject to the same laws as the disaffected people in that district? Englishmen ought to be allowed to go to any part of India without being put to the humiliating position of being forced to go and tell the Magistrate of each district that they were loyal subjects, and should be licensed. If it was admitted that Englishmen with their energy and capital had developed the resources of the country, why should we throw any impediment in their way? But the grand argument appeared to be that, as it was impossible to say with certainty, among the mass of Natives, who were loyal and who were not, and although we knew that the Europeans were all loyal, still they were not to be exempted, because forsooth it would be class legislation. We must bear in mind that the Native population of a province had been in arms against Europeans. There was no use of disguising the fact that the struggle was to overthrow the British rule in that Province. He knew that there were many loyal Natives who did not sympathise with that rebellion. He had no objection to the insertion of a Clause exempting loyal Natives. But he had no means of ascertaining all the loyal Natives, though he had it in his power of ascertaining and telling the Council that all Europeans, Americans, and Eurasians were loyal. And was it just or right for the Council to include the Europeans in this enactment? The Executive Government of this country, he thought, could not be in better hands than at present constituted; and he had, as he had already more than once stated, every confidence in that Government. In fact nothing would give him greater pleasure than to see the Executive Government of this country allowed to mature and carry into effect the important measures that were now under their consideration, without that perpetual interference on the part of certain individuals in England, who pretend to so much wisdom on Indian affairs. The premature discussion in both Houses of Parliament on measures brought forward on the responsibility of the Government of India had had a most pernicious effect both here and in England, and had impeded the action of the Indian Government in carrying out their measures. He humbly thought that the Executive Government was pursuing an impolitic course in seeking to subject Europeans to the provisions of the Bill now under our consideration, and entertaining a strong conviction on the subject, he must persist in his opposition to the Arms Bill in its present form. If passed by a majority of this Council he believed it would subject thousands of loyal Europeans to restrictions and inconveniences from which they were justly entitled to be exempted, considering the position they occupied in this country.

SIR BARTLE FRERE would only ask the Honorable and learned Judge whether, during the two years the Act had been in force, there was a single instance in which Europeans had been put to any practical inconvenience. Under the old Act there was no exemption. What the difficulty really was he (Sir Bartle Frere) did not know. Did the Honorable and learned Judge believe that during a revolt an Englishman would ever be deprived of his arms? If he did, he (Sir Bartle Frere) would at once vote in favor of the motion. The hardship appeared to him to be no more than that in the case of a European, who would be ordered to send his wife and children away in case of a disturbance.

THE CHAIRMAN said, he should certainly have admired the eloquent language of the Right Honorable Member, had he only been consistent, and refused to allow an exemption to any one. But the Right Honorable Member was not satisfied with allowing a Magistrate to grant a license to carry arms, but he had introduced a Section to allow the Magistrate to exempt any one from the Act. If there was no fear that Europeans would in the least be subject to the law, he would ask where was the necessity of extending it to them?

Why not exempt them at once and not subject them to the whim or caprice of a Magistrate. Was it because they were afraid of giving offence to the Natives? If there was to be no inequality, he saw no reason at all why one person sh uld be bound to get a license and another should have the privilege of being exemp'ed by the local Government. If it was impolitic to exclude Europeans, let all classes be dealt with equally; no Native, however high in rank, should be excluded. He ought to be equally bound to take out a license. Clause 4 made a person liable to hard labor for two years. Was it intended that the law should be carried out, or to leave it to the option of the Magistrate to enforce it or not as he pleased? He (the Chairman) would support the motion of his Honorable and learned friend, and if that motion should not be carried, he would propose the omission of Clause 6.

The ques ion being put, the Council divided:—

Ayes 3	*Noes* 4.
Sir Mordaunt Wells.	Mr. Forbes.
Mr. Sconce	Mr. Harington.
The Chairman.	Mr. Wilson.
	Sir Bartle Frere.

So the Motion was negatived.

THE CHAIRMAN then moved the omission of Clause 6, which was as follows:—

"The provisions of this Section shall not extend to any person or persons exempted by the authority of the Governor-General of India in Council, or of the local Government of the proclaimed District, or by any European Officer serving in such District duly authorized by the local Government on that behalf."

He wished to know on what ground or for what purposes such an exemption was necessary. He thought that whatever exemptions were granted above or beyond the law should be made on the responsibility of the Government alone.

MR. WILSON said that, as part of the Section to which the Clause now under discussion belonged was prepared by himself, he would explain the reason why he proposed it, although he thought that the object of it must be pretty obvious to every one. The Section in question provided for an emergency. A district might happen to be in a state of insurrection, and the necessity of proclaiming it might arise very suddenly. It was very necessary therefore that local Officers should be invested with the power of exemption. He (Mr. Wilson) could not conceive a better authority in whose hands could be reposed the power of determining what persons in each district should be exempted or not, than the Magistrate of the district. It was quite clear that, if a district were to be in a state of insurrection, the first thing that ought to be done was to weaken the hands of the disloyal and to strengthen the hands of the loyal subjects; and no one was better competent to exercise such a discretion than the local Magistrate, who knew the loyal from the disloyal. He (Mr. Wilson) did not know that this was any new principle at all. If he mistook not, he heard from his Honorable and learned friend in the Chair which he so ably filled, that, when the Act of 1857 was extended to several places, an exemption was made in favor of Europeans and other classes. A similar Act was passed for Ireland, which, so far as he recollected, gave power to any two Magistrates to exempt the houses of such persons as they thought fit from being searched.

THE CHAIRMAN said, he had no objection to the local Governments being allowed to authorize Magistrates to grant licenses to loyal men, but he would not leave it to a Magistrate to say whether a man was to be exempted from the law or not. That was a power which, if vested in any one, should be entrusted only to the Government. He knew of no case in which Parliament had ever passed an Act authorizing Her Majesty or Her Majesty's Ministers to exempt any one from its provisions. But here it was proposed to allow a Magistrate to do so. Why was it necessary to allow any one to grant exemptions, except to enable them to yield to the prejudices of individuals. If the power was necessary to enable

the Government to exempt Natives of high rank, who might think it derogatory to apply for a license, he (the Chairman) claimed the same privilege for all Europeans, and would exempt them by the Act Did he believe that every loyal European who went to the Government would get an exemption? No, the answer that he would get would be—"Go to the Commissioner of Police or the Magistrate and take out a license." Whereas, if a high caste Native were to go and ask for an exemption, that privilege would probably be granted to him when it would not be granted to every European.

MR WILSON remarked that the same provision was made for all. The fair mode of comparison would be by taking the case of a high European and a high Native, or a low European and a low Native.

THE CHAIRMAN said, the question was, whether the power of exemption would be acted upon in favor of all alike—a man ought not to be exempted on account of his wealth or of his noble birth but on account of his loyalty. The high caste Native was not one whit more loyal than the low caste Native. He (the Chairman) did not speak of them as individuals, but as a class. But it was because they knew that a particular class was loyal that they ought to exempt them. He did not believe that there was a single European against whose loyalty there had been any suspicion If therefore we were to yield to the prejudices of the Natives, we ought in like manner, and with equal justice, to yield to the prejudices of Europeans. But if it were determined not to exempt them, let every man be bound to take out a license. To exempt a man from the law because he was of noble birth or a man of wealth was what he called inequality and injustice.

SIR BARTLE FRERE said, he felt considerable difficulty in seeing his way clearly through the objections taken by the Honorable and learned Chairman, who in one part of the debate contended in favor of exemption, and now objected to it.

The Chairman

THE CHAIRMAN explained, that what he meant to say was, simply, exempt Europeans or no one.

SIR BARTLE FRERE resumed. This was a Clause for exempting all alike at the discretion of Government. The reason why it was considered necessary to give the Government and the local Officers the power of exempting as well as of licensing was to save time, because if licenses were to be granted it would take a very long time to grant them throughout a proclaimed district, and the process of exempting would be gone through more rapidly. A great deal had been said as to the Government having some hidden reason for requiring the power of exempting certain classes, and that it arose from a fear of giving offence to the Natives. To this he must give the most unqualified and emphatic denial. No doubt, as was surmised, high caste Natives might and he hoped would obtain exemptions. He was equally certain that a European merchant or any gentleman would in the same way be exempted if he wished it. He begged to assure the Honorable and learned Chairman that John Smith or Brown would get his exemption as well as any Native Prince if he were equally well known to the Magistrate. Of course if the Magistrate knew nothing about him he would be treated as any native of whom nothing was known With regard to the question of allowing the Government the power to grant exemptions, he had no hesitation in saying that it was not through any fear of giving offence to the Natives, but for the benefit of all classes, that the Government desired to retain that power. Speaking of giving offence to the Natives, why the whole Bill was a most unpalatable measure. There was no wish to please or displease any class. The principle upon which they were legislating, he must say on behalf of himself and his colleagues, was the same as that which had guided all English statesmen in legislating for India from the time of Pitt and Fox, of Burke and Sheridan, down to Sir Edward Ryan and Lawrence Peel, Macaulay and Metcalfe.

The question being put, the Council divided :—

Ayes 2.	*Noes* 5.
Sir Mordaunt Wells.	Mr. Sconce.
The Chairman.	Mr. Forbes.
	Mr. Harington.
	Mr. Wilson.
	Sir Bartle Frere.

So the Motion was negatived.

Section XLIII was passed after an amendment

MR HARINGTON moved the introduction of the following new Section after Section LI :—

"All licenses which may by this Act be granted by a Magistrate may, in the Presidency Towns, be granted by a Commissioner of Police."

Agreed to.

SIR BARTLE FRERE moved the introduction of the following Section before Section I :—

"Act XXVIII of 1857 shall continue in force until the 1st day of October 1860."

Agreed to.

SIR BARTLE FRERE moved the addition of the following Section to the Bill :—

"The first Section of this Act shall take effect from the passing thereof, and all the rest of this Act shall take effect from and after the 1st day of October 1860. This Act shall continue in force for five years from the said 1st day of October."

Agreed to.

The Council having resumed its sitting, the Bill was reported.

MR. HARINGTON then moved that the Bill be now read a third time and passed.

THE VICE-PRESIDENT said, it was unnecessary for him to repeat the objections which he entertained to this Bill. He would state them briefly as follows :—*1st*, that the Bill included Europeans, Americans, and Eurasians ; and, *2ndly*, that the 31st Section gave power to any European Officer of Government to exempt persons from the operation of the Act. With regard to the first, he thought that Europeans ought to be exempted, because they were known to be loyal ; and with regard to the second, it appeared to him that exemptions ought only to be granted by the Government. He had no doubt that the Bill would be carried by a majority of this Council. He desired it to be on record that he was not a party to the passing of it.

SIR MORDAUNT WELLS said, he had from time to time stated his objections to the Bill, and he would not now trouble the Council with a repetition of them. He would therefore also shortly state that he entertained strong convictions against this Bill, which would be passed by a majority of this Council, and would soon become the law of the land. And he desired to record his entire concurrence in all that had fallen from his Honorable and learned friend, the Vice-President.

MR. HARINGTON said, the questions upon which the Honorable and learned Vice-President had again touched in the few remarks which had just fallen from him had already been so fully considered that he did not perceive that the further discussion of them could lead to any useful result, or be attended with any public benefit. But he felt that he should be failing in his duty if he did not take this opportunity of acknowledging the obligations under which he considered that the Honorable and learned Vice-President had placed himself, and he believed he might say every other Member of this Council, as well as the Supreme and Executive Governments, by his laborious, and he would add, well-directed exertions to perfect this Bill, and to render it a really useful law. Taking the Bill as a whole, he thought that every body would allow it was a very good Bill, and he felt satisfied that it would prove a most valuable addition to the Criminal Statutes of the country. There was one Clause in the Section which had been introduced on the motion of the Honorable and learned Vice-President, which he (Mr. Harington) certainly wished had not been there, as he did not like the idea of the North-Western Provinces being singled out and made the subject of special legislation, owing

to circumstances which had passed away; but he did not think it necessary to press his objections, and he was well content to allow the Section, in which this Clause was contained, to remain as settled by the Committee. There could be no doubt that the Section itself would greatly strengthen the hands of the Executive Government, and that it was a great improvement to the Bill. He regretted the angry feelings to which the discussions upon the Bill had given rise. He hoped that time would produce its usual effect upon them, and he entertained a confident expectation that, when it was found that the practical working of the Bill really afforded no reasonable ground of complaint to respectable people, to whatever section of the community they might belong, the conviction would spread rapidly and soon become general that, in settling the Bill, as it now finally stood, the Council had acted wisely, judiciously, and justly.

THE VICE-PRESIDENT said, he felt much obliged to the Honorable Member for his remarks as regarded himself. He (the Vice-President) considered it his duty to assist this Council, as far as lay in his power, in preparing and passing laws, and although he might be out-voted on particular Clauses, and was thereby prevented from voting for the third reading of the Bill, he still considered it his duty to assist the Council in making it as complete as possible in other respects.

The question being put, the Council divided :—

Ayes 5.	*Noes* 2.
Mr. Sconce	Sir Mordaunt Wells
Mr. Forbes.	The Vice-President.
Mr. Harington.	
Mr. Wilson.	
Sir Bartle Frere.	

So the Motion was carried, and the Bill read a third time.

MR. HARINGTON then moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

Mr. Harington

POSTPONED ORDERS.

The following Orders of the Day were postponed :—

The Committee of the whole Council on the Bill "relating to the transportation of Convicts"

The Committee of the whole Council on the Bill "to indemnify officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances."

The Council adjourned at 4 o'clock on the Motion of Sir Bartle Frere.

Saturday, July 21, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

His Excellency the Commander-in-Chief,	H. B. Harington, Esq.,
Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq., and
Rt Hon'ble J. Wilson,	A. Sconce, Esq.

ARMS AND AMMUNITION.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "relating to the manufacture, importation, and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases."

INCOME TAX.

THE CLERK presented to the Council a petition from proprietors of permanently settled estates in Bengal, Behar, and Orissa, against the Bill "for imposing Duties on Profits arising from Property, Professions, Trades and Offices," and stated that it was similar to those already printed.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

THE CLERK reported that he had received a communication from the

Home Department, submitting a report from the Bombay Government on the working of Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)

MR FORBES moved that the above communication be referred to the Select Committee on the Bill to amend that Act.

Agreed to.

INCOME TAX

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill

The blank in Section I was filled up by the insertion of the words and figures "31st day of July 1860," as the day from and after which the Duty of three per cent was to be collected and paid

A verbal amendment was made in Section III by the insertion of words to indicate that roads and canals were to be included in the term "reproductive public works."

Two blanks in Section VI were filled up, by the insertion in the first, of the words and figures "1st day of August 1860," as the commencement of the first year of assessment, and in the second, of the words and figure "1st day of August" as the commencement of every subsequent year of assessment

Section XI provided for the appointment in the Presidency Towns and Straits Settlement of Commissioners not in the service of Government.

MR FORBES moved the addition of the following words, providing for the remuneration of the Non-official Commissioners :—

"The local Government may grant to such Commissioners in the Presidency Towns and Stations in the Straits Settlement as may not be in the service of Government, such fee or remuneration as may be approved by the Governor General of India in Council."

The Motion was carried and the Section as amended then passed

Unimportant amendments, for the most part verbal, were carried in Sections XXXVII, LIX and LXXX, and in Rule 1 of Section XCVII.

Rule 4 required persons in receipt of rents and profits of lands and houses, other than lands paying revenue direct to Government under settlements subject to revision, to make returns and to be chargeable with actual profits

After some verbal amendments in the rule, Mr Wilson moved the addition of the following words :—

"And every such return and rent roll shall be filed in the Collector's Office, and shall be conclusive evidence against the person making such return in any suit for the recovery of rent as to the amount payable by any tenant included in such rent roll for the period to which such return applies, and shall also be conclusive evidence against him in all other actions or suits, unless it shall be proved to the satisfaction of the Court or Officer before whom such return and rent roll is offered in evidence that any statement contained therein is erroneous and that the error arose from accident and not from any fraudulent intention, in which case the said Court or Officer shall not be bound to treat the same as conclusive"

Agreed to

Rule 13 allowed no deduction from the assessment of any land or house, unless expressly authorized in writing, &c

MR. WILSON moved the addition of the following proviso :—

"Provided it shall be lawful for the local Government to authorize a deduction to be made in respect of any extraordinary or unusual charge to which the property is subjected."

The Motion was carried, and the Section as amended then passed.

A verbal amendment was made in Rule 46 of Section XCVIII

The blank at the end of Rule 1 of Section XCIX was filled up with the words and figures "1st day of August 1860," as the date from which interest, annuities, and dividends should be chargeable

Verbal amendments were made in Sections CXVIII, CXXVI, CXXVII, CXXIX, and CXLII.

Section CLXXXIV provided as follows :—

"If any claim shall be made to or in respect of any immoveable property attached under the provisions of this Act, the claimant shall deposit in the hands of the Collector or Commissioners the amount of the duty in respect of which the attachment was issued, or give security to the Collector or Commissioners for the payment of the same, in the event of his not establishing his right in a civil suit. The sale shall be stayed pending such suit. Such suit shall be commenced within one year from the date of the attachment, and unless it be brought within such period, the suit shall not be entertained."

MR. WILSON moved the addition of the following words :—

"In the event of the claimant failing to establish his claim, if any deposit shall have been made, it shall be forfeited in satisfaction of the Duty, and if security shall have been given, the amount shall be levied in the manner provided for arrears of Duty under this Act."

The Motion was carried and the Section as amended then passed.

Verbal amendments were made in Sections CXCIII and CXCIV.

Section CXCIX was omitted as unnecessary.

A verbal amendment was made in Section CC.

Section CCI provided as follows :—

"Every person who, with the intention of inducing any Collector, or any other Officer employed to carry out the provisions of this Act, to refrain from exercising any of the lawful powers vested in such Collector or other Officer under the authority of this Act, or with the intention of inducing any person liable to pay any Duty under this Act, to refrain from making any return or declaration, or doing any act, or making any payment required by this Act, shall assault, or make a show of assaulting, or shall wrongfully restrain, or attempt wrongfully to restrain, or shall overawe by means of an unlawful assembly, or attempt to so overawe any such Collector or other Officer, or any such other person as aforesaid, shall be liable to a sentence of imprisonment, with or without hard labor, for a period not exceeding twelve months or to a fine not exceeding five hundred Rupees, or to both, such fine being commutable, if not paid, to a further period of imprisonment not exceeding twelve months."

MR. WILSON moved the insertion of the following words after the word "aforesaid" and before the words "shall be liable," &c., at the end of the Section.

"And all persons who shall combine by the closing of shops or otherwise to induce, or who shall do any act with intent to induce any other person or persons to break the public peace, or otherwise to obstruct the operation of this Act."

The Motion was carried and the Section as amended then passed.

Section CCXVI (among other things) provided that persons assessed at less than the proper assessment by fraudulent removal or fraudulent disposition of property, should be charged treble the difference in addition to the assessment.

After a verbal amendment—

MR. WILSON moved the addition of the following words :—

"And shall also be liable to be imprisoned with or without hard labor for a period not exceeding two years, and to a fine not exceeding one thousand Rupees."

The Motion was carried, and the Section as amended then passed.

MR. WILSON moved the introduction of the following new Section after Section CCXLV :—

"No suit, action, or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended action and of the cause thereof, nor after the expiration of three months from the accrual of the cause of action or other proceeding."

Agreed to.

Section CCXLIX provided for the commencement and continuance of the Act.

Several amendments were passed, among which was one fixing the date for the commencement of the Act from and after the 31st July 1860, and another limiting the operation of the Act to five years ending 1st August 1865.

The title was passed as it stood; and the Council having resumed its sitting, the Bill was reported.

TRANSPORTATION OF CONVICTS.

MR. HARINGTON moved that the Council resolve itself into a Committee upon the Bill "relating to the Transportation of Convicts."

Agreed to.

The Bill passed through the Committee without amendment, and the Council having resumed its sitting, was reported

INDEMNITY

MR HARINGTON moved that the Council resolve itself into a Committee upon the Bill "to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed."

Agreed to.

MR SCONCE said that the Council was already aware he had not concurred with the majority of the Select Committee in reporting upon this Bill, and as he was opposed to the further progress of the Bill, he was desirous now of stating his objections to the Council It was to him a matter of much regret that he could not adopt the Bill in the form in which it now stood. When the Bill was read a second time, he stated his objections, and he had now little to add to what he then urged

In rising now, it was less his purpose to attempt to persuade the Council to agree with him than simply to explain the grounds of his objections. The Bill, as the Council would observe, contained two Sections. The first he believed had this effect; all penalties and contributions that had been imposed subsequent to the 10th May 1857, on any account whatever, were condoned by this Bill. In the earlier portion of the Section a limitation seemed to be assigned to the acts contemplated The contributions were assumed to have been imposed with respect to the destruction of Government or other property, but the effect of this limitation was changed by the words immediately following, which indemnified the levying of any contribution, for whatever purpose, with the sanction of Government, it had been imposed It seemed to him, therefore, that the words "on any other account" were a great deal too wide Again, the second Section extended to acts of any kind done since the 10th May 1857 in connection with the late disturbances, and in fact covered the impositions of the first Section. Here the words were of the largest kind and not only were the doers of the acts to be indemnified, but the Section went so far as to confirm and make them valid, that is, this Council would give validity to acts of which it knew nothing. Both Sections seemed to him much too large to be adopted by the Council.

Another objection which he entertained to the Bill was this, that the Sections were not sufficiently specific as to the time when the acts to which the Bill related might have been done. By the terms of the Bill, the acts proposed to be indemnified might be done down to that very moment. Now, while he entirely agreed as to declaring a penal indemnity to the proceedings necessitated while mutiny and rebellion prevailed throughout the country, he was not satisfied that the same law should be brought down to the present time. He observed that various Acts passed in 1857-58 were framed so as to meet the particular emergency for which each was required—as for instance, the Arms Act, the Act relative to escaped Convicts, the Act for the punishment of Heinous Offences, and more particularly Act X of 1858, which permitted the levying of contributions for rebellion, harboring offenders, and almost every nameable heinous offence. It appeared therefore that the local officers, knowing the limitation which this Council had, on repeated occasions, placed on their proceedings, might well be expected to have regulated their conduct by confining themselves to the exercise of the extraordinary powers which the Legislature had thought adequate to the circumstances of the times. It was with reluctance that he offered any opposition to this Bill, but his opinion being as it was, he could not refrain from signifying his disapproval of it

Lastly, it seemed to him that the objectionable character of the Bill was

further shown by its extension to all the Presidencies. He need not remind the Council that the reasons shown for the introduction of the Bill applied to the North-Western Provinces only. So far as he knew, no desire had been expressed by the Bengal Government that the acts of its officers should be indemnified. He might, he believed, say the same as to the Presidencies of Bombay and Madras. Now, while a demand was made on us to indemnify acts done beyond the law, acts done in times of trouble and in times of peace, feeling that a certain degree of stigma did attach to the illegality to be condoned, it seemed to him to be the more necessary that we should be guarded as to the terms of the Bill, and the Provinces to which it was to be applied: in fact, that, applying the law according to the acts done in a particular Presidency, we should justify their illegality on the ground of the emergent circumstances of the time which called for them.

These were his reasons for opposing the further progress of the Bill.

MR. HARINGTON said, his Honorable friend the Member for Bengal did not appear to have brought forward any new arguments against this Bill, but to have confined himself, in a great measure, in the remarks which had just fallen from him, to the objections which he took to the Bill when the principle of it was debated on the Motion for the second reading. On that occasion, he (Mr. Harington) endeavored to answer those objections, and as the Council allowed the Bill to be read a second time, he considered that he was justified in assuming that they were satisfied of the necessity of giving to the Government of the North-Western Provinces, for whose protection the Bill was chiefly designed, the full amount of indemnity which the Bill provided He would not occupy the time of the Council by repeating what he had said in support of the Bill when he moved the first reading, or again on the Motion for the second reading; but in reference to some of the remarks which had fallen from the Honorable Member for Bengal, he would observe that extraordinary times called for extraordinary action, and that extraordinary acts on the part of the Executive Government often required special and exceptional legislation, which was necessary, and, when the necessity was established, was always allowed, in order to prevent the obviously inconvenient consequences which would result if acts committed at such times were permitted to be called in question and made the subject of judicial investigation. In the present case, he would merely reiterate what he had formerly stated, namely that no one could doubt the *bonâ fide* character of the acts which this Bill was intended to cover, or that they were considered absolutely necessary for the restoration of public tranquillity, and the re-establishment and maintenance of our rule; and that he felt quite sure that the Council would not consent to sit in judgment upon any of the measures resorted to by the Government of the North-Western Provinces and its Officers for the accomplishment of those objects or allow those measures to be enquired into by the ordinary Courts of the country, with a view to determine in each case whether the particular measure was justifiable and necessary, or otherwise. The Honorable Member for Bengal complained that the Bill was drawn in too large terms, and that it applied to other places than the North-Western Provinces for which alone a Bill of this nature was required; but he had moved no amendments. If it could safely be said that the Bill was not required for any parts of the Lower Provinces of Bengal, or for any places in Madras or Bombay, he (Mr. Harington) should have no objection to the application of the Bill being limited to the North-Western Provinces.

MR. FORBES said that he had spoken on the second reading of this Bill, and supported the necessity for such a measure. The Honorable Member for Bengal now desired to restrict the operation of the Bill to the North-Western Provinces of the Presidency of Bengal, but in this he (Mr. Forbes) could not concur.

It was no doubt true that the late rebellion had very little effect in the southern part of India, but still there had been some disturbances in North Canara, a district which bordered on the foreign territory of Goa, and on the Southern Mahratta country, and it had been found necessary to put in force the exceptional laws which had been passed in 1857. He had no reason to believe that any illegal acts had been committed by the Officers employed to enforce the law in Canara, for which a Bill of indemnity was necessary; but still he would not consent to shut them out from the benefit of such a law, when brought into this Council, to be generally applicable to all India. He for one, therefore, should not support any Motion which might be made to restrict the operation of the Bill to the North-Western Provinces of Bengal.

THE CHAIRMAN said, if the Honorable Member for Bengal considered any words in the Bill too large, it would be better for him to suggest any amendment which would have the effect of qualifying or limiting them, than to oppose the Bill altogether. The Honorable Member had taken exception to the words "or on any other account" in Section I as being too wide. Probably the addition of the words "connected with the late disturbances" would meet the Honorable Member's objection. He (the Chairman) did not think it to be the intention of the Act to indemnify public officers and other persons from all acts whatever done after the mutiny. It was intended only to protect them from any proceedings in respect of acts done with the sanction of Government connected with the disturbances. It appeared to him that the acts of public Officers acting in such an emergency ought not to be too closely scrutinised He thought that the words "sanctioned or ratified by the Executive Government" were an ample safeguard and a sufficient limitation of the indemnity. It was not intended to authorise any new levy of fines or penalties. The Act was restricted to cases in which fines had already been actually levied. He considered that the words, as they now stood, were sufficiently clear; but if the Honorable Member entertained any doubt upon the point, and considered that the Section, as at present worded, might be understood to authorize Officers to continue levying such fines or assessments not warranted by law, he (the Chairman) had no objection to propose the addition of the following proviso to Section I:—

"Provided that nothing in this Act shall authorise the levy of any fine, penalty, assessment, or contribution not already levied."

Then, with regard to Section II, it did not apply to all future acts as supposed by the Honorable Member. It merely provided as follows:—

"All acts done since the 10th day of May 1857, in connection with the late disturbances, by Officers of Government or by persons acting under their authority in pursuance of an order of Government or otherwise, or which shall have been or shall be ratified by the Executive Government, are hereby confirmed and made valid, and all such Officers of Government and persons as aforesaid are hereby indemnified and discharged from liability in respect of such acts."

It appeared to him (the Chairman) that, in the printing of the Bill, the words "or otherwise" had by mistake been inserted after the word "Government" instead of after the word "authority." [Mr. Harington signified assent.] The object of their insertion was to include persons not in the service of Government, who had afforded very valuable assistance in suppressing the mutiny. He thought it would be very hard to expect such persons to be proceeded with according to law for such acts of public service. There were many gentlemen not in the service of Government who took a very active part in the suppression of the mutiny. Some of them acted under the authority of Government. Others again might have acted without such authority, and according to their own discretion. He thought that, if the Government chose to ratify the acts of such persons, they were just as much entitled to protection as the Officers of Government, or as if they had acted

under the authority of Officers of Government. They had done their best to put down the mutiny, and we should be doing a great injustice if we were not to extend the indemnity to them. It was for that reason that he had suggested the introduction of the words "or otherwise," but unfortunately by an error of the printer they had been inserted in the wrong place. This would of course be set right.

The Honorable Member then objected to including the other Presidencies in the Bill, upon the ground that it might imply that acts had been committed which were contrary to law. Did he seriously mean to say that, as the representative of the Bengal Presidency, he wished to exclude the Officers under his Government from the provisions of the Bill?

MR. SCONCE said, his objections were not to acts done during the mutiny, but to acts done after the local Governments knew they were doing wrong. Allusion had often been made of late to Her Majesty's Proclamation. That was published at the close of 1858, and he could not help thinking that the tendency of the present Bill was to justify acts that had been done contrary to the spirit of the announcement made in the name of Her Majesty. The Bill, however, condoned all acts, even those done beyond the law within the last three months. It was because of this indefinite extension of the law that he objected to the Bill. Looking upon the measure as a recognition of illegal acts, he had said that he had no reason to believe that the Bengal Government required any indemnity for its Officers, and therefore the wide and universal scope of the Bill seemed to him the more objectionable.

THE CHAIRMAN said that, with regard to the extension of the protection to a period later than the Queen's Proclamation, the Honorable Member for Bengal would recollect that considerable disturbances were going on long after the time when that Proclamation had been published. So lately as 1859 the rebellion was not ended in Shahabad, where it was necessary to clear the jungle in order to disperse the rebels, and acts might have been done at that time and also in many other places where the rebellion existed long after the proclamation, which required indemnity just as much as those which had been committed before the proclamation.

The Honorable Member had urged in support of his argument that a period of three months and more had elapsed during the publication of the Bill. It appeared to him that that was one of the strongest arguments against the objections of the Honorable Member, for, notwithstanding the Bill had been published for general information during that period, not a single petition had been presented against the Bill, and he was not aware that a single action had been commenced by any person who considered himself aggrieved. He (the Chairman) thought that the Bill ought to be passed and extended to the whole of India. He would let by-gones be by-gones in all parts of India alike. He did not understand that the Honorable Member asked for the exclusion of Bengal, and he did not think that the Honorable Member could fairly object to the including of the Presidencies of Madras and Bombay, if the Act were to extend to the North-Western Provinces.

The amendments proposed by the Chairman in Sections I and II were then severally carried; and the Council having resumed its sitting, the Bill was reported.

EMIGRATION TO NATAL.

SIR BARTLE FRERE said that, in the Orders of the Day for the 7th of July, the Bill "relating to Emigration to the British Colony of Natal" was set down for Committee of whole Council, but could not be proceeded with on that day owing to the late hour at which the Council adjourned. The Bill was perfectly identical with the other Bills for the same purpose relating to other Colonies. He understood moreover that a person had arrived here from Natal for the purpose of carrying out the object of the Bill; and if the Council had no objection, he (Sir

Bartle Frere) would wish to proceed with it to-day. He therefore begged to propose a suspension of the Standing Orders.

MR. WILSON seconded the motion, which was put and carried.

SIR BARTLE FRERE then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee without amendment; and the Council having resumed its sitting, was reported.

INCOME TAX.

MR. WILSON moved for a suspension of the Standing Orders. to enable him to move the third reading of the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

SIR BARTLE FRERE seconded the Motion, which was put and carried.

MR. WILSON then said that, in moving the third reading of this Bill, he should have been happy, if time and the state of his health permitted, to state to the Council the various measures which the Government had adopted to reduce the expenditure of the country. When he explained the views of the Government on the 18th February last, he pledged the Government that, while imposing new taxes, every effort would be used, not only to improve the character and efficiency of our establishments, but also to reduce expenditure in every possible way. Several measures had already been adopted in order to carry out those objects, and, upon the whole, he might venture to say that those measures were working satisfactorily. When the Licensing Bill should next come before the Council, he would be better able to state at length the results of some of those measures. But he could not allow this Bill to pass without returning his most cordial thanks to the Council for the valuable assistance which he had received from them in the preparation of of it He was largely indebted to the Honorable and learned Vice-President for the great pains he had taken in perfecting this measure, and so also to every Honorable Member of this Council. It was a source of great satisfaction both to himself and the Government to observe that a Bill containing so many Sections as this did, and in which several amendments had been made, should have passed the Council not only unchanged in its main provisions, but without a single division from first to last having taken place. As he had said before, he would, on a future occasion, enter at greater length into the measures adopted by the Government for rendering more effective and more economical the administration of India. He begged to move now that the Bill be read a third time and passed.

THE VICE-PRESIDENT said, he could not allow this Bill to be read a third time and passed without recording his opinion upon it. The Bill, he must say, had his entire concurrence. The Right Honorable gentleman had fully satisfied the Council as to the inability of Government to carry on the administration of the country without additional taxation, and it appeared to him (the Vice-President) that, of all the taxes that could be devised, the present would be found to be the most just and least objectionable, as every man would be called upon to contribute to the State according to his means, and no more. With regard to the poorer classes, he thought this tax must necessarily benefit them, as the condition of the country would improve according as its finances were put on a wholesome and sound footing. He had one remark to make however with regard to that part of the Bill which affected landholders under the permanent settlement. He so entirely concurred in all that had fallen from the Right Honorable Member regarding the justness of taxing proprietors of permanently settled estates, that it was scarcely necessary for him to say any thing on the subject. But having written a Minute some years ago, and it having been intimated to him on a former occasion that his opinion now was different from that expressed in the Minute in question, he would take this opportunity of saying that, having referred to the Minute and bestowed upon it careful consideration, he had come to the conclusion that his opinions

on both occasions were entirely consistent with each other. As he said before, every Minute had reference to the particular subject under discussion at the time it was written. That Minute was written on the subject of taxing zemindars for the purpose of maintaining chowkeydars. The latter was an exceptional measure, while the Income Tax was a general tax affecting the whole country. The question then was as to taxing the zemindars alone, and he certainly thought that, in so doing, the Government would be violating the promise they had made at the time of the permanent settlement. The following was what he said :—

"It is clear that, according to the engagement entered into at the time of the permanent settlement, the jumma then fixed cannot be altered. It was declared by the Governor General in Council, that the zemindars and other proprietors of land and their heirs would be allowed to hold their estates at such assessment for ever (See Regulation I of 1793, Section IV), and that the orders fixing the amount were to be considered irrevocable and not liable to alteration by any persons whom the Court of Directors might appoint to the administration of the affairs of the Company (Section VII). At the conclusion of the permanent settlement, the Governor-General in Council expressed his confidence that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, would exert themselves in the cultivation of their lands, under the certainty that they would enjoy exclusively the fruits of their own good management and industry, and that no demand would ever be made upon them for an augmentation of the assessment in consequence of the improvement of their estates (Regulation I of 1793 Section VII). The same principle which prevents an augmentation of the assessment, equally precludes the taxation of the owners in respect of the rent or produce of their estates."

That was with reference to a Bill to tax them and them alone, and not with reference to a Bill for taxing the whole community. He could not add anything to the clear and lucid statement of the Right Honorable Gentleman. He (the Vice-President) would only say that he retained the same opinion now which he expressed on that occasion, namely, that the Government had bound themselves not to raise the jummas of the proprietors of permanently settled estates as a separate and independent body; but he must add that, having looked into the case carefully, he thought that landholders under the permanent settlement were justly liable to the Income Tax.

He must congratulate the Right Honorable gentleman on the success which had attended his labors in getting through this Bill. Although he had lost a few months in accomplishing the work, yet great advantage would result from the great labor which had been bestowed on the measure by the Right Honorable Gentleman and by the Honorable Members who represented the different Presidencies, and whose knowledge of the circumstances of the several Presidencies qualified them to advise as to the best system to be adopted for working the Act. Every Honorable Member with himself had done his best, and had endeavored to give his most hearty co-operation He must say that the thanks of every one were due to the Government for their perseverance in carrying through this measure, notwithstanding the great difficulties they lately had to contend with. He thought that, when people found this measure to be fair and just, no impediment would be offered to the carrying out of the provisions of the Bill. But of this he was sure that, if any obstruction were thrown in the way of Government, this Council would be firm in giving their assistance to the Government, in order to put the finances of the country on a proper and wholesome footing.

The Motion was then carried, and the Bill read a third time.

EMIGRATION TO NATAL.

SIR BARTLE FRERE moved that the Bill "relating to Emigration to to the British Colony of Natal" be read a third time and passed

The Motion was carried, and the Bill read a third time.

DEBTORS AND CREDITORS.

THE VICE-PRESIDENT (in the absence of Sir Mordaunt Wells) moved that the Bill "for facilitating arrangements between Debtors and Creditors" be referred to a Select Committee, consisting of Mr. Harington, Sir Mordaunt Wells, and the Mover.

Agreed to.

EMIGRANT VESSELS.

SIR BARTLE FRERE moved that the Bill "relating to vessels carrying Native Passengers to the British Colonies" be referred to a Select Committee, consisting of Mr. Sconce, Mr. Forbes, and the Mover.

Agreed to.

INCOME TAX.

MR. WILSON was instructed (on his own Motion) to take the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices" to the Governor-General for his assent.

EMIGRATION TO NATAL.

SIR BARTLE FRERE was instructed (on his own Motion) to take the Bill "relating to Emigration to the British Colony of Natal" to the Governor-General for his assent

SALE LAW.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces relating to Act I of 1845 and the Revenue Sale Law passed last year, be laid upon the table.

Agreed to.

PAPER CURRENCY.

MR. WILSON gave notice that he would, on Saturday, the 28th Instant, move the second reading of the Bill "for the introduction of a system of Paper Currency."

The Council adjourned at 4 o'clock on the Motion of the Commander-in-Chief.

Saturday, July 28, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President.*

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq., and
H. B. Harington, Esq	Hon'ble Sir M. L. Wells.
H. Forbes, Esq.,	

INCOME TAX AND EMIGRATION TO NATAL.

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor General had assented to the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," and the Bill "relating to Emigration to the British Colony of Natal."

THE VICE-PRESIDENT regretted to state that Mr. Wilson was prevented by indisposition from attending the Meeting of the Council to-day, and had requested him to postpone the motion (which stood in the Orders of the Day) for the second reading of the Bill "to provide for a Government Paper Currency" until next Saturday. There not being the quorum required by law for a Meeting of the Council for the purpose of making laws, the Meeting could not proceed with the other Orders of the Day, and must, therefore, be adjourned until Saturday next, unless otherwise expressly appointed. It being considered desirable, however, that the consideration of the Bill "to consolidate and amend the law relating to Stamp Duties" should be resumed on Monday or Tuesday evening next, he (the Vice-President) would suggest that next Tuesday evening, at half past 8 o'clock, would be the more convenient time for Sir Mordaunt Wells and himself to attend.

The Council accordingly adjourned at half past 11 o'clock to next Tuesday evening, at half past 5 o'clock, on the Motion of Sir Bartle Frere.

Tuesday Evening, July 31, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President,* in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Rt. Hon'ble J. Wilson,	A. Sconce, Esq., and
H. B. Harington, Esq.,	Hon'ble Sir M. L. Wells.

RECOVERY OF RENTS.

THE CLERK presented to the Council a Petition from Baneemadhub Mitter, Native Inhabitant of Goatullee, in Zillah Nuddea, in the Province of Bengal, relative to a modification of Sections XXIII and XXX of Act X of 1859 (to amend the law

relating to the recovery of Rents in the Presidency of Fort William in Bengal).

MR. HARINGTON moved that the above Petition be printed.

Agreed to.

STAMP DUTIES.

THE CLERK reported to the Council that he had received from the Home Department communications from the Governments of Bengal and the North-Western Provinces relative to the repeal of Section XXXVII Act X of 1859 by the Bill "to consolidate and amend the law relating to Stamp Duties."

MOFUSSIL MUNICIPAL LAW.

THE CLERK also reported that he had received a communication from the Government of Bombay relative to an amendment of Act XXVI of 1850 (to enable Municipal improvements to be made in Towns)

SIR BARTLE FRERE moved that the above communication be printed.

Agreed to.

WRECKED BOATS.

MR. SCONCE postponed, till next Saturday, the motion (which stood in the Orders of the Day) for the first reading of a Bill for the preservation of property recovered from wrecked boats.

RAILWAYS.

MR. FORBES, in moving the first reading of a Bill "to amend Act XVIII of 1854 (relating to Railways in India)," said that this was a short Bill, and it required that very little should be said on the occasion of its introduction.

The Council were aware that Act XVIII of 1854 was the law that regulated Railways in India, protecting the Railway Companies from fraud, and their property from injury, and protecting the public from the effects of carelessness, misconduct, and neglect. The law had generally been found fully effectual for the purposes for which it was passed, and the only part which he believed had ever been considered to need amendment, was the part to which the Bill he was now to introduce referred, and to which he would now request the attention of the Council.

Section XXVII of the Act provided that

"Any Officer or servant of such Railway Company, who shall be in a state of intoxication whilst actually employed upon the Railway, or any of the works connected therewith, in the discharge of any duty, and any Officer or servant of such Company, who negligently shall omit to perform his duty, or shall perform the same in an improper manner, shall be liable to a fine not exceeding fifty Rupees; and if the duty in any of the cases in this Section above mentioned be such that the omission or negligent performance thereof would be likely to endanger the safety of any person travelling or being upon such Railway, such Officer or servant shall, on conviction before a magistrate, be liable to imprisonment, with or without hard labor, for a term not exceeding one year, or to fine, or to both.

By Act XVIII of 1859, however, it was provided that offences declared by any Act to be punishable by a Magistrate should, if committed by a European in the Mofussil, or by any person within the limits of the Supreme Court, be punishable by that Court, except in cases in which jurisdiction was expressly given to a Justice of the Peace, and this, under the Railway Act, was confined to cases in which the offender was liable to fine only, so that at present, if a European was concerned, all offences for which a sentence of imprisonment was called for must be sent for trial before the Supreme Court.

Now the inconvenience that arose from this necessity to commit to the Supreme Court was very great, so great that it might amount to an entire failure of justice, for as the sufferers from, and the witnesses to, any misconduct on the part of a Railway servant must generally be the passengers by the train, whose stay at the Presidency was of course very uncertain, a trial before the Supreme Court might be unsuccessful solely from the absence of witnesses who could not wait the weeks or months that would intervene between the committal of the offender for trial and the next ensuing Sessions.

In Madras there were only four Criminal Sessions in the year, and it was very easy to understand how impossible it might be for passengers by a Railway to remain at the Presidency for two or three months to give evidence at a future Ses sions as to the misconduct of a Railway servant.

It was proposed therefore by this Bill to amend the Act so far as to give Justices of the Peace in the Presidency Towns power to pass a sentence of six months' imprisonment with labor, in all cases in which they might consider that that punishment would be sufficient, and in which they might have reason to believe that a failure of justice would result if the case were committed to the Sessions, owing to the absence of any material witness, reserving to them the extended jurisdiction given by Section XXX of the Act, and leaving them in all other cases to follow the present law and commit to the Supreme Court.

The powers which it was now proposed to give under the Railway Act were not new, and a reference to Section XXXII of Act XIII of 1856, commonly called the Town Police Act, would show that, under circumstances similar to those which he had referred to, two justices might try summarily any case which they might deem it probable would fail, if prosecuted by indictment before the Supreme Court, owing to the departure of any material witness by any vessel that might be about to sail from the Port, and might sentence, on conviction, to imprisonment for one year, with labor.

More than one case had lately occurred of trains being driven by men in a state of intoxication, and the safety of the public imperatively called for such an interference of the Legislature as should prevent any man who committed so great an offence escaping punishment from the inability of witneses to wait a long time before a trial could be held.

With these remarks he begged to move that the Bill be read a first time.

The Bill was read a first time.

INDEMNITY.

MR. HARINGTON moved that the Bill "to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances," be read a third time and passed.

The Motion was carried, and the Bill read a third time.

TRANSPORTATION OF CONVICTS.

MR. HARINGTON moved that the Bill "relating to the transportation of Convicts" be read a third time and passed.

The motion was carried, and the Bill read a third time.

STAMP DUTIES.

The Order of the Day being read for the third reading of the Bill "to consolidate and amend the law relating to Stamp Duties"—

MR. WILSON moved that the Bill be re-committed to a Committee of the whole Council for the purpose of considering proposed amendments therein.

Section V (which prescribed how receipt stamps were to be denoted) was passed after a verbal amendment, and the addition of the following words:—

"It shall be lawful, until the Governor-General in Council shall direct to the contrary by an order to be published in the Gazette, to use a Postage Stamp of the value of half anna on every receipt, draft, or order for which a half-anna Stamp is required by this Act."

A verbal amendment was made in Section VI.

An amendment was made in Section XII (on the motion of the Chairman), the effect of which was to prevent deeds, instruments, or writings, not duly stamped, not only from being received in evidence as the Section already provided, but also from being acted upon in any Court of Justice or by any Public Officer.

Section XIII was passed after verbal amendments in the 1st, 2nd, and 6th Clauses.

Section XXI provided as follows:—

"Every vender of Stamps shall write on *the back (at the bottom of the page)* of each Stamp which he issues, except Stamps used for Receipts or for Bills of Exchange, Drafts, or other orders for money, the date of issue, the

name of the person to whom it is issued, and his own ordinary signature, on pain of a fine not exceeding one hundred Rupees"

MR WILSON proposed several amendments, which were carried, and which made the Section run as follows, the words in italics being those omitted or inserted :—

"Every vendor of Stamps shall write on *some convenient part* of each stamp which he issues, except Stamps used for Receipts or for Bills of Exchange, *Promissory Notes*, Drafts, or other Orders for money, *Bankers' Agreements for loans, or Bills of Lading*, the date of issue, &c"

Section XXXII was passed after a trifling amendment in the 1st Clause.

Verbal amendments were made in Sections XXXV and XXXVI.

Section XLII was passed after the substitution of "1st of October" for "1st of September," as the date of commencement of the Act

Verbal amendments were made in the heading of Schedule A, and in Articles 1, 12, 13, and 17.

Article 19 related to Conveyances.

After a verbal amendment—

MR WILSON moved the introduction of the following new Clause in the article :—

"Conveyances when the consideration is an annuity	The same Stamp as for a Conveyance when the purchase money is equal to ten times the annuity '

Agreed to.

THE CHAIRMAN moved the introduction of the following new Clause after the above :—

"Conveyances of any kind whatever not otherwise charged if the value of the property conveyed or of the consideration for the conveyance be stated, or appear on the face of the conveyance.	The same duty as would be charged if a consideration in money equal to such value were expressed in the Conveyance as the consideration thereof
' If no value appear on the face of the Conveyance	Fifty Rupees "

Agreed to

Verbal amendments were made in Articles 21, 23, and 25.

Article 27 provided as follows :—

	Rupees	Annas
' *Exchanges*.—Any deed or instrument whereby any real property shall be conveyed or surrendered in exchange for other property— If no sum of money shall be paid or agreed to be paid for equality of exchange	8	0
If any sum of money be paid or agreed to be paid for equality of exchange	A Stamp of value exceeding by eight Rupees the Stamp required for a conveyance in a case where the consideration is equal to the sum paid or agreed to be paid for equality of exchange '	

THE CHAIRMAN proposed amendments, which were severally carried, and which made the Article run as follows .—

Exchanges.—Any deed or instrument whereby any real property shall be conveyed or surrendered in exchange for real property	The same stamp as for Conveyances '

A verbal amendment was made in Article 33

Article 34 related to letters or powers of Attorney not provided for in Schedule B

THE CHAIRMAN moved the introduction of the following Clause before the Note .—

' Warrant of Attorney to confess judgment, or Cognovit, unless taken as collateral security for the payment of any sum of money secured by another instrument stamped with an *ad valorem* stamp under this Act	The same Stamp as for a Bond
If given as such collateral security as above mentioned	5 Rupees "

Agreed to.

MR. WILSON moved the introduction of the following new articles after article 36 :—

"Re-conveyance of mortgaged property	The same Stamp as for Assignments
Release of an equity of redemption	The same Stamp as for Conveyances

Agreed to.

A trifling amendment was made in Article 40

Article 47 contained the following exemption —

"Wills, testaments, and the like, together with deeds merely declaratory of trust or otherwise, pursuant to any previous settlement, deed, or will"

MR. WILSON proposed amendments, which were severally carried, and which made the Article run as follows, the amendments being printed in italics .—

"Wills, testaments, and the like, together with deeds merely declaratory of trust *or appointment or apportionment* or otherwise, *in*

execution of powers or pursuant to any previous settlement, deed, or will."

MR. WILSON moved the introduction of the following exemption in the same Article :—

"Deeds for securing gifts or dispositions made by previous settlements, deeds, or wills."

Agreed to.

A verbal amendment was made in the heading of Schedule B.

Article 5 contained the following General Exemption :—

"Petitions or applications presented to any Moonsiff's Court in relation to any suit or case of an amount or value less than fifty Rupees."

MR. SCONCE moved the addition of the following words to the above :—

"Or to a Collector or Deputy Collector in relation to any suit or case of the same amount or value tried under Act X of 1859."

Agreed to.

The Council having resumed its sitting, the Bill was reported.

MR. WILSON then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. SCONCE moved that Mr. Wilson be requested to take the Bill to the Governor-General for his assent.

Agreed to.

INDEMNITY.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances" to the Governor-General for his assent.

Agreed to.

TRANSPORTATION OF CONVICTS.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "relating to the Transportation of Convicts" to the Governor-General for his assent.

Agreed to.

The Council adjourned at half past 8 o'clock (on the Motion of Sir Bartle Frere), till Saturday, the 4th of August.

This leaf is to be cancelled on the issue of Part VIII.

execution of powers or pursuant to any previous settlement, deed, or will."

MR. WILSON moved the introduction of the following exemption in the same Article :—

"Deeds for securing gifts or dispositions made by previous settlements, deeds, or wills."

Agreed to.

A verbal amendment was made in the heading of Schedule B.

Article 5 contained the following General Exemption :—

"Petitions or applications presented to any Moonsiff's Court in relation to any suit or case of an amount or value less than fifty Rupees."

MR. SCONCE moved the addition of the following words to the above :—

"Or to a Collector or Deputy Collector in relation to any suit or case of the same amount or value tried under Act X of 1859."

Agreed to.

The Council having resumed its sitting, the Bill was reported.

MR. WILSON then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. SCONCE moved that Mr. Wilson be requested to take the Bill to the Governor-General for his assent.

Agreed to.

INDEMNITY.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances" to the Governor-General for his assent.

Agreed to.

TRANSPORTATION OF CONVICTS.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "relating to the Transportation of Convicts" to the Governor-General for his assent.

Agreed to.

The Council adjourned at half past 8 o'clock (on the Motion of Sir Bartle Frere), till Saturday, the 4th of August.

Saturday, August 4, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

His Excellency the Commander-in-Chief,
Hon'ble Sir H. B. E. Frere,
H. B. Harington, Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.,
and
Hon'ble Sir M. L. Wells.

INDEMNITY, TRANSPORTATION OF CONVICTS, AND STAMP DUTIES.

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances"; the Bill "relating to the Transportation of Convicts"; and the Bill "to consolidate and amend the law relating to Stamp Duties."

MASTERS AND SERVANTS.

THE CLERK presented to the Council a Petition from the Calcutta Trades Association, on the subject of a law regarding Masters and Servants.

MR. SCONCE moved that the above Petition be printed.

Agreed to.

PENAL CODE.

THE CLERK reported to the Council that he had received a communication from the Bombay Government, regarding the case of a Frenchman, who was charged with having obtained money and goods from a Tradesman in Poonah under false pretences, but who was obliged to be discharged owing to the defective state of the law.

SIR BARTLE FRERE said that, as he understood the Penal Code would provide for such cases, he would propose that the communication just reported to the Council lie on the table.

Agreed to.

INCOME TAX.

THE CLERK also reported to the Council that he had received a communication from the Governor of the Straits Settlement, relative to the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

SIR BARTLE FRERE said, he believed that the matter referred to in this communication would be provided for by instructions already issued to the Governor of the Straits Settlement. He would therefore propose that the communication lie on the table.

Agreed to.

WRECKED BOATS.

MR. SCONCE moved the first reading of a Bill "for the preservation of property recovered from wrecked boats." He said, the object of this Bill was to provide a remedy for the evils which had for several years been found to exist to a considerable extent in Bengal. In the great Rivers in Bengal boats carrying the traffic of the country were constantly being wrecked. A correspondence, recently transmitted to him by the Bengal Government, suggested the expediency of adopting some measure having for its object, not only to regulate the proceedings of the local Officers in such cases, but also to induce villagers living on the banks of the rivers to interest themselves in saving wrecked property by offering them salvage. In the following extract of a letter from the Magistrate of Moorshedabad, Mr. Herschel, the evil was thus described:—

"Plunder of wrecked boats has been a crime brought strongly to my notice this quarter. I have to-day seen the wrecks of six boats, one wrecked before my eyes. In the other I came in time to save the property from the hands of the ryots, who had plundered every sack of wheat In another I was too late; the wreck having been cleared out in half an hour by the crews of boats going down the stream. (This having occurred above Jungypore, I am in hopes I may secure some of the delinquents to-morrow morning: two have been arrested already.) In my Report in the Hazarpoorah wrecking case, I recommended the extension of Act XVI of 1850 to the entire village concerned. In addition to this I would suggest a distinct Law of Salvage. The property which I have saved from plunder to-day would have vanished in a few hours had I not secured the ryots a four-anna share of it. With proper precautions against the inducements to purposely wreck, a Salvage Law for river wrecks would go far to mitigate the evil. At present there is no sufficient general inducement to the population to turn out to save wrecked property while there is a very great inducement to the contrary course."

There was a very general concurrence of opinion among the Officers in Bengal as to the necessity for a law of this kind. Wrecks and depredations on wrecked boats, though not of universal occurrence, frequently took place in Bengal, especially in the greater rivers, such as the Hooghly, and the body of the Ganges, and upwards from above Dacca to ards Patna. The purpose of this Bill was not to meet the question as to the offences committed by the wilful casting away of boats, or the felonious taking of the property found in wrecked boats. That question more properly belonged to the Penal Code, and an opportunity would probably be found, at no distant period, of considering how far the Code would sufficiently reach the offences referred to. The Bill which he had prepared, however, was confined mainly to the regulation of the recovery of wrecked cargo, by imposing penalties on its irregular removal, and enabling Magistrates to award salvage to the parties who might regularly engage in its recovery. The Bill was founded wholly upon the Sections of the Merchant Shipping Act, 17 and 18 Vic, c. 104, relating to ships or coasting boats stranded, or in distress on the sea-shore, or any tidal rivers in England. These provisions, though mainly applicable to vessels on the sea-shores of England, seemed to

him to be quite applicable to the wrecks suffered in the great rivers in this country, in the mode proposed by the Bill.

Some years ago the Bengal Government took up this matter, and would have carried legislation farther than he now proposed. In a letter addressed to the Government of India, in 1853, it was proposed to extend legislative action to boats which had been cast away and run ashore by their crew, with the felonious intent of stealing the cargo. But, as he had said before, it would be better to avoid this part of the question, and to confine ourselves to the matter of the recovery of wrecked property. In the letter from the Secretary to the Government of Bengal, dated the 28th May 1853, it was remarked as follows:—

"In July of last year, a boat, in which Captain Bird of the 11th Native Infantry, and his family were proceeding to Chittagong, was run aground on the coast, (there is every reason to believe intentionally), and before the boat became a wreck, three hundred or four hundred people from the neighboring villages collected, and together with the crew broke open Captain Bird's boxes, and plundered the whole of his property, worth about three thousand Rupees."

* * * * * * *

"The Governor of Bengal is disposed to think that the provisions of the existing law, the construction of which is shown above to be open to doubt, are insufficient for the prevention of the heinous crime of wrecking and plundering boats, which has long been known to prevail along the great rivers of Bengal, and on the North-eastern shore of the Bay. His Lordship would take the offence out of the category of those punishable by a Magistrate, and include it specifically among those which are now declared by law to amount to gang robbery. At the same time His Lordship would render it incumbent on all owners and managers of land to give information of wrecks happening in their estates, and give authority to the local Government to raise a special police in places where the crime is found to prevail, charging the expense on the inhabitants. Lastly, His Lordship would empower the Magistrate to award salvage in cases of wreck or danger to the extent of a moderate proportion of the value of the boat and cargo."

This letter would be printed for the consideration of the Council. He had thought it necessary, however, on the present occasion, to refer to it, both because it suggested that the offence of wilful wrecking should be specially dealt with, and because it advocated a Law of Salvage.

He would only add, with the view of satisfying the Council that good grounds existed for the introduction of the present measure, that, in the papers to which he had referred, several cases, in which cargoes of considerable value were wrecked, were noticed by the Magistrates. Among them was mentioned the case of a boat which had been wrecked and property of the value of four thousand Rupees plundered by the villagers. In the ordinary course of law, the matter was enquired into, and the result was that a portion of the property was recovered, and several of the villagers were punished. But afterwards, when another boat containing a cargo, valued at three thousand six hundred Rupees, was wrecked in the same neighborhood, the villagers gave no assistance whatever. So that, in any point of view, a Law of Salvage was desirable.

With those remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

MR. FORBES moved the first reading of a Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)." He said, the object of this Bill was simply to substitute the Commissioner of Police in the Presidency Towns for the Magistrate, as the executive officer to enforce the surrender of land required for public purposes under Act VI of 1857, when the Collector might be obstructed or opposed in taking possession of such land.

Section IX of the Act provided that the Magistrate should be the executive officer, and the expression led to the belief that the Mofussil, where there was one particular officer called "the Magistrate," was referred to, and not the Presidency where there were several Magistrates; and this

view was much strengthened by the ruling of the Honorable and learned Chief Justice in a case under the Post Office Act, which occurred last year, and which, though not strictly in point, tended very much to the belief that the word "Magistrate" used in Act VI of 1859 meant the Mofussil Magistrate, and not Justices of the Peace in the Presidency Towns.

But, independently of that argument, he thought that there could be no doubt that, for the performance of an executive act, in which a breach of the peace might possibly occur, the Commissioner of Police should be the Officer to act and not the Magistrate before whom a case arising out of the act of the Police might eventually come for trial.

The Bill needed no further explanation, and he would now move that it be read a first time.

The Bill was read a first time.

PAPER CURRENCY.

SIR BARTLE FRERE (in the absence of MR. WILSON) postponed the Motion, which stood in the Orders of the Day, for the second reading of the Bill "to provide for a Government Paper Currency."

CRIMINAL JUSTICE (SUPREME COURTS.)

SIR MORDAUNT WELLS gave notice that he would, on Saturday next, call the attention of the Council to the evidence given before the Indigo Commission by the Honorable Mr. Eden, a Member of the Bengal Civil Service, so far as his evidence referred to the administration of Criminal Justice in Her Majesty's Supreme Court.

PENAL CODE.

THE VICE-PRESIDENT gave notice that he would, on the same day, move for a Committee of the whole Council on "The Indian Penal Code"

The Council adjourned at noon, on the Motion of the Commander-in-Chief.

Saturday, August 11, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble C. Beadon,	A. Sconce Esq,
H. B. Harington, Esq.,	and
	Hon'ble Sir M. L. Wells.

The following Message from the Governor-General was read by the Vice-President:—

MESSAGE No. 233.

With reference to the Message from the Legislative Council, No. 138, dated the 25th February 1860, the Governor-General in Council has the honor to forward to the Legislative Council the accompanying copy of a Despatch from the Right Hon'ble the Secretary of State, No. 6 of 1860, dated the 29th June, communicating the disallowance by Her Majesty's Government of Act XVI of 1859.

By order of the Right Hon'ble the Governor-General,

(Signed) W. GREY,
Secy. to the Govt. of India.

FORT WILLIAM,
The 6th August 1860.

MR. FORBES moved that the Clerk be requested to read the above Despatch at the table.

The Motion was carried and the Despatch read accordingly.

MR. FORBES then moved that the Despatch be printed.

Agreed to.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding copies of papers from the Secretary of State for India relative to a suggestion for the amendment of Section XXXVII of Act VI of 1857 (for the acquisition of land for public purposes.)

MR. FORBES moved that the above communication be printed.

Agreed to.

INCOME TAX.

SIR BARTLE FRERE moved the first reading of a Bill "to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices)." He said that, in consequence of the inevitable absence from illness of his Right Honorable friend (Mr. Wilson), it became his duty to move the first reading of this Bill.

It was intended to supply one or two defects which had come to light since the Income Tax Act had been put into operation. He need not remind the Council, in an Act of so novel a character, embracing such a variety of provisions as the Income Tax Act, and extending over so many Provinces so differently administered, how difficult it must be to provide for all possible cases which would arise. Any person who had observed the amount of debate and discussion which preceded the passing of the Income Tax Act in England must know how impossible it was found to avoid leaving many points to be supplied after the Act was put into working operation. Of course it would be impossible to say, after so short a working of the present Act, that the Bill now proposed would supply all the defects which might become apparent. All that could be said was that all the points which had at present been noticed would be provided for.

He would state briefly the objects proposed to be provided for by this Bill. The first Section was intended to provide for the difficulty which had arisen from the diversity in the modes of Government which rendered the Act inapplicable to particular portions of India and to particular classes employed in the administration of those territories. It was found that the Section which provided for the levy of Duties on salaries of Public Offices would be inapplicable to some of the Non-Regulation Provinces, more especially to Oude and the Punjab, which had been temporarily exempted from the operation of the Act, in consequence of their being already subject to special forms of taxation in anticipation of the passing of the Act. The difficulty might have been met by a simple order of Government, that such and such incomes would be liable to deduction, but it was considered more desirable to bring the practice, as far as possible, into accordance with the legal exigencies of the case.

There was another difficulty owing to the oath of secrecy not having been taken by the Ex-Officio Assessors before the Act was put into operation. It appeared to the legal officers of the Government that this would not invalidate their assessments, but might render them liable to prosecution; and though this was not deemed probable, it was thought necessary to guard against such a possibility. This was accordingly provided for in the Bill.

There was a further Section, which provided a more complete definition than was afforded by the present Act of the Officers in the Marine Department who were to be exempted from the Duties.

He proposed that the Bill should be read a first and second time and referred to a Select Committee to-day, and that it should be considered by a Committee of the whole Council next Saturday. It was with something more than a feeling of the greatest diffidence that he took any part in the amendment of a measure which had been introduced by his Right Honorable friend. It was with a feeling of the deepest personal regret—a regret in which he felt assured that every Member of that Council shared—that he undertook a duty which, but for the illness of his Right Honorable friend, would otherwise have devolved on him. For many months the Members of that Council had had the benefit of that enlarged experience, that mature good sense, those statesmanlike views, and that perfect amiability of character, which caused us all to feel that we had among us one who added lustre to the character of this body, and whose association with us was a great privilege. It was because he felt that, if his Right Honorable friend had been here to-day, he would have acted as he (Sir Bartle Frere) proposed to act, and that the Bill would have

had his (Mr. Wilson's) entire sanction, that he undertook to bring it in.

He would only add that the Bill had been framed by the legal officers of the Government, and that he had, in drawing it up, availed himself of that valuable assistance which the Honorable and learned Vice-President was always so ready to afford to perfect every measure, whether of greater or minor importance, which came before the Council. With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

SIR BARTLE FRERE moved that the Standing Orders be suspended, in order that, as he had already intimated, the Bill might be read a second time.

MR. BEADON seconded the Motion, which was put and carried.

SIR BARTLE FRERE then moved the second reading of the Bill.

The Motion was carried, and the Bill read a second time.

SIR BARTLE FRERE moved that the Bill be referred to a Select Committee, consisting of Mr. Harington, Mr. Forbes, Mr. Sconce, and the Mover, with instructions to report thereon this day week.

Agreed to.

CARNATIC ESTATE.

MR. FORBES, in moving the first reading of a Bill "to repeal Act XVI of 1859," said that the Secretary of State, in the Despatch which had just been read from the table. having disallowed that Act, it became necessary to take immediate steps for its repeal. Section XLIV of the Charter Act enacted as follows:—

"Provided always, and be it enacted, that in case the said Court of Directors, under such control as by this Act is provided, shall signify to the said Governor General in Council their disallowance of any laws or regulations by the said Governor General in Council made, then and in every such case, upon receipt by the said Governor General in Council of notice of such disallowance, the said Governor General in Council shall forthwith repeal all laws and regulations so disallowed."

The only precedent which he could find for proceeding in such a matter was the case of the Patent Law of 1856, which having been disallowed by the Court of Directors, a Bill was immediately introduced for repealing it.

He proposed to follow that precedent now, and should therefore move that the Bill be read a first time.

The Bill was read a first time.

MR. FORBES said, the Section of the Charter Act which he had just read, declared that, upon receipt by the Governor-General in Council of notice of the disallowance of an Act, the Act should forthwith be repealed. There was no option in the matter. He therefore moved for a suspension of the Standing Orders, in order that the Bill might be passed through its remaining stages forthwith.

MR. HARINGTON seconded the Motion, which was put and carried.

MR FORBES moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

THE VICE-PRESIDENT then observed that, the Standing Orders having been suspended, there was no necessity for the Council going into Committee upon the Bill, unless any Honorable Member wished it.

MR. FORBES accordingly moved that the Bill be read a third time and passed.

The Motion was carried and the Bill read a third time.

MR. FORBES moved the first reading of a Bill "to explain Act XXX of 1858 (to provide for the administration of the estate and for the payment of the debts of the late Nabob of the Carnatic)." He said, it was not his intention, in introducing this Bill, to make any lengthened remarks. All the circumstances connected with it were fresh in the memories of most Honorable Members from the discussion which took place on the introduction of Act XVI of last year. But as there were one or two Honorable gentlemen now present, who were not Members of this Council at the time he referred to, he would very briefly state whence arose the necessity for the Bill, and after what had passed, it would perhaps be better that he should

do so, as far as possible, in the words of the former debate and of the Despatch received from the Secretary of State.

In introducing Act XVI of last year he said :—

"The Council was aware that from 1825 to 1842 the late Nabob was a minor, and that his uncle, Prince Azeem Jah, managed his affairs as Naib-i- Mooktar or Regent. On the death of the Nabob, and the decision of the British Government, that the title and dignity of the Nabob of the Carnatic had ceased, it was determined that, as the revenues enjoyed by the Nabob in his life-time had lapsed to Government, it would be right that they should undertake the payment of debts which it was reasonable to suppose that his creditors had allowed the Nabob to contract, in full reliance that the dignity would descend, supported by its accustomed revenues. Accordingly Act XXX of 1858 was passed, in order to provide for a fair adjudication of all claims preferred against the Nabob for debts contracted on his behalf during his minority, and by himself after he came of age, the Act declaring that the East India Company was willing to pay in full all such debts as should be proved to have been fairly and justly contracted by the Nabob, or on his behalf during his infancy by Azeem Jah as Nabob Regent, and he would beg the particular attention of the Council to these words, 'fairly and justly,' and 'on his behalf,' because the present Bill owed its origin to the necessity which had arisen for declaring the meaning which those words conveyed.

"In a suit brought against the Government under Act XXX of 1858, for money lent of Azeem Jah during his Regency, the Judges of the Supreme Court at Madras had unanimously ruled that the words 'fairly and justly' in the Act meant only what was just and fair as between borrower and lender, that is, between the Regent and the Banker, and that whenever the latter had lent money, and the former had received it, a debt was justly and fairly contracted within the Act, without any reference to the question whether the debt was properly and necessarily contracted as between the Regent and the Minor Nabob, or whether it was for the latter's use or not, and they had further ruled that the words 'on his behalf' meant merely in his name, and were satisfied by proof that the Regent had pledged the name of the Nabob. The decision on claims which altogether amounted to more than forty lakhs of Rupees depended on the interpretation to be given to the words he had just referred to, and although he would not so far presume as to take upon himself to say that the interpretation of the words of the Act by the Supreme Court was erroneous, as a Member of the Select Committee which sat upon the Bill, and as a Member of the Council which passed the Act, he must say that the interpretation which had been put upon the Act by the Supreme Court was not that which the Legislature intended that it should bear.

"The Government did not offer, and this Council did not intend, to pledge the Government to pay the debts of Prince Azeem Jah, but those of the late Nabob ; and throughout the Act repeated mention is made of the debts of the Nabob, and the creditors of the Nabob, pointing out, apparently with some distinctness, what the intention of the Legislature was.

"But however that might be, there was no doubt that the Act had been misunderstood; and whether the misunderstanding had arisen from a faulty wording of the Act, or from a misapprehension of its terms, a declaration of its true intention was now clearly necessary."

On the subject of the intent and meaning of Act XXX of 1858 the Secretary of State now said—

"From the correspondence which preceded the passing of Act XXX of 1858, it is manifest that the Court of Directors undertook the payment only of the legitimate debts of the late Nabob of the Carnatic, and that they enjoined the importance of taking the utmost care against the admission of improper claims, by which Her Majesty's Government understood claims, the liability for which did not attach to the Nabob himself. It certainly could not have been the intention of the Court to render the Government of India liable for debts which the Nabob had not incurred, or which had not been incurred by the Regent, Azeem Jah, *bonâ fide* on his behalf, and which he had in fact repudiated after attaining his majority.

"On a question of a legal character, on which a difference of opinion prevails between the Judges of the Supreme Court at Madras and the Legislative Council, I do not think it is the duty of the Secretary of State to pronounce a judgment. I will therefore only say that, to ordinary understanding, it would appear as if the Legislature intended by the Act of 1858 to provide for the payment of all such debts as might have been enforced at law on ordinary principles against the Nabob of the Carnatic and of no others, and this whether such debts were in fact contracted by the Nabob himself or by the Regent during his infancy on his behalf. Such is apparently the meaning of the Act itself, and into the reasons which may have induced the passing of that Act the Supreme Court could not properly enter."

Act XVI was passed to clear up the misunderstanding of the intention of the Legislature, and it provided that no debt contracted by Prince Azeem Jah Bahadoor, during the minority of the Nabob, should be deemed a debt within the meaning of Act XXX of 1858, unless *it should be proved* that it was

necessary and proper that such debt should be contracted for the use of the Nabob, and it was with reference to this requisition of *proof* that the Secretary of State had now disallowed the Act. Sir Charles Wood said:—

"By that Act, although it professes to be only a declaratory one, they do in fact introduce a new element of proof. They require the creditor of the Regent to show that the debt was such as it was 'necessary and proper' to incur, words which might certainly be so construed as to render proof, especially after many years, extremely difficult, and to exclude from the benefit of the former Act persons who might actually and rightfully have considered their cases provided for by it, as having *bonâ fide* lent their money for the Nabob's use to the Regent, as the legal representative duly authorized by the British Government to act on behalf of the said Nabob.

Taking this view of the Act XVI of 1859, Her Majesty's Government are precluded from giving their sanction to it. They accordingly disallow it under the provisions of 3 and 4 William IV. c. 85 s. 44, and it is hereby disallowed.

The Act in question being repealed, it remains to be considered what course should be adopted for the protection of the Government from the effects of the interpretation which the judges of the Supreme Court at Madras are considered by the Legislative Council as having placed on the terms of the enacting clauses of Act XXX of 1858.

This may be done, if thought necessary, by passing, on the repeal of Act XVI of 1859, another Act explanatory of Act XXX of 1858, and providing that no deb contracted by the Regent during the minority of the Nabob shall be deemed a debt or claim within the meaning of Act XXX of 1858, unless such debt was incurred by the Nabob himself, or by the Regent actually and *bonâ fide* on behalf and for the use of the Nabob. While on the one hand, the Government should be protected against liability for the private debts of the Regent, on the other hand the claimant should not be called upon for an impossible amount of proof; and where, in the case of a debt proved to have been incurred by the Regent, the question of liability is doubtful, the Government, like any other defendant, should be required to prove its right of exemption from responsibility for the claim."

The Bill which he now introduced was drawn in the very terms of the last paragraph of the Despatch which he had read, and as it had been already circulated, all Honorable Members had had an opportunity of considering it, so that he might now relieve the Council from further attention, and at once move the first reading of the Bill.

Mr. Forbes

The Bill was read a first time.

MR. FORBES moved that the Standing Orders be suspended, in order that the Bill might be passed through its remaining stages forthwith. He said that, when he introduced the Bill of last year to explain Act XXX of 1858, he moved for a suspension of the Standing Orders, and had explained the reason why he thought that the Bill ought at once to be passed through its several stages. He had stated that it was fortunate we had no adverse decisions to legislate against, for, although the Supreme Court at Madras had given an erroneous interpretation of the law, the claim in which the interpretation was made was decided in favor of the Government, and on other grounds than as to the interpretation to be put on the part of the Act to which he had been referring. The circumstances, of course, remained the same now as then, and would, he hoped, enable the Council to support him in his present motion.

MR. HARINGTON seconded the Motion.

MR. SCONCE wished to appeal to the Honorable Member for Madras, whether it was absolutely necessary that the Bill should be proceeded with at once to-day. It was true that the Bill and Statement of objects and reasons had been printed and circulated to the Members a day or two ago; but it was not until this day that he saw the Despatch from the Secretary of State. It was not a matter which affected the Government only, but the creditors of the late Nabob also. So far as he understood, the Secretary of State was fully satisfied with the present law. It seemed to him (Mr. Sconce) therefore, that at least a week's time should be allowed before the Bill was carried through. It might be read a second time to-day, and the third reading might be put off till this day week.

MR FORBES said, the question was much more confined to this Council than the Honorable Member for Bengal wished us to believe. We were now only called upon to declare what our meaning was in passing Act XXX

of 1858, and surely it was quite competent to the Council to discuss that question to-day. The Honorable gentleman had said that he saw the Despatch from the Secretary of State only to-day. But the Council would remember that the Honorable Gentleman took a very active part in the debate which took place on this very question fourteen months ago, and he (Mr. Forbes) was sure that the Honorable Gentleman would not gain more information on the subject from delay than he had been in possession of for the last fourteen months. He (Mr. Forbes) believed he had shown that good grounds existed for the passing of the Bill at once to-day, as it was very desirable that on the same day that the Bill repealing Act XVI of 1859 was passed, the present Bill should also be passed, so that both might be despatched to Madras at the same time.

SIR MORDAUNT WELLS said, he did not think that there should be the slightest delay by this Council in carrying out the view expressed in the Despatch. He (Sir Mordaunt Wells) gathered from the terms of the Despatch that the Secretary of State entertained a different opinion from that expressed in the judgment delivered by the learned Judges at Madras. However that might be, the Judges at Madras had expressed an opinion respecting Act XXX of 1858, which was wholly inconsistent with the intention of this Council when they passed that Act, and great difficulty might arise were the Judges to express a similar opinion now that Act XVI of 1859 had been repealed. He would not venture to criticise the Secretary of State's Despatch, but he would only observe that that Despatch, while objecting to the Council importing a new element of proof into an explanatory Bill, laid a special stress upon the word *proof* itself. The whole question really was, what the Judges should consider to be proof, and that was a matter beyond the Secretary of State's control. The Madras Court or any Court would require *legal* proof, and would not, nay, could not, be satisfied with less. That being so, he did not propose to make any further observations on the Despatch of the Secretary of State. He (Sir Mordaunt Wells) thought that the Standing Orders should be suspended, because he would not let the public at Madras have any reason to think that the construction put by the Judges at that Presidency had been confirmed by the Home Government. He thought it was due to this Council and to the public that the matter should be disposed of without a moment's hesitation, so that not the slightest doubt on the subject might be entertained. He did not propose to go into the general question now. Although he was not a Member of this Council when Act XVI of 1859 was passed, he had read all the papers connected with it, including the judgments of the Madras Court and the Report of the Select Committee of this Council, together with the debates of the Council, and the conclusion to which he had come was that the action of the Council had been right throughout. After referring to the case of the Dean of St. Asaph and to other instances of similar declaratory Acts having been passed, Sir Mordaunt Wells went on to say that he had every respect for the learned Judges at Madras, as men of undoubted ability. At the same time he must say that he entirely differed from them in the opinion they had expressed that, when a doubt should arise as to the meaning of a law, it was not competent to the Legislature to declare its meaning, so that there might no longer exist a doubt in the matter. He had had many years' experience in the practice of both Houses of Parliament, and he could say that, whenever doubts as to the meaning of an Act of Parliament existed or sprung up in a Court of law, it was very common for the Legislature to pass an Act of Parliament to declare the intention of the Legislature in passing that law. In the present case a doubt having existed with regard to an Act passed by this Council, the Council passed another Act declaring what was the intention of the Council, and the Secretary of State had disallowed this Act. It did not signify in his (Sir Mordaunt

Wells') opinion whether the word "proof" appeared on the face of the Act or not. But as it was considered important that the Section should be re-enacted with the omission of that word, it was necessary that there should be no delay in carrying out the measure, so that there might be no doubt as to the intention of the Legislature in passing Act XXX of 1858.

THE VICE-PRESIDENT said, it was extremely important that the Standing Orders should be suspended, and that the new Act for explaining Act XXX of 1858 should go to Madras at the same time with the Act repealing Act XVI of 1859. A decision, rather a dictum of the Madras Judges, had given color to certain claims against the Government of India. This dictum he (the Vice-President) believed to be wrong; but if it were allowed to be acted upon, it would involve loss not only to the Government, but the people of this country, of nearly half a million sterling. Just after having passed an Act imposing a tax on incomes down to two hundred Rupees a year, were we to allow half a million of Government money to be thus frittered away towards the payment of debts which the Government were under no obligation to pay? Were the people to be taxed for the purpose of paying debts which had not been incurred for the use of the late Nabob? Prince Azeem Jah himself had admitted that he was personally liable for those debts. The question therefore simply was, were we to send down an Act repealing the Act of 1859, and not to send down a new Act explaining the Act of 1858? It was not his intention to criticise the Despatch of the Secretary of State, or to challenge the course which Her Majesty's Government had thought proper to pursue in this case. The Council had a certain duty to perform, and the Council had done that duty to the best of its ability. The Secretary of State had a veto, and might exercise it in respect of any Act which this Council might pass. But he could not order the Council to pass an Act. The functions of the Council were clear and distinct, and must be fulfilled on clear convictions of duty

In the present case the Secretary of State had disallowed the Act and the Council were bound to repeal it. But at the time when he disallowed the Act, he had also suggested a course which might be adopted, if thought necessary, for the protection of Government from the effects of the interpretation put upon Act XXX of 1858 by the Judges of the Supreme Court at Madras. He fully concurred in the suggestion, and thought that an explanatory Act was necessary. That being so, the new Act ought in his opinion to be passed at once, so that it might go to Madras at the same time as the repealing Act and no interval ought to be allowed between the repeal of Act XVI of 1859 and the passing of a new explanatory Act.

The Motion was then put and carried.

MR. FORBES moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time,

MR. FORBES moved that the Council resolve itself into a Committee upon the Bill.

Agreed to.

Section I provided as follows:—

"No debt contracted by the said Prince Azeem Jah Bahadoor, during the minority of the said late Nabob, shall be deemed a debt or claim within the meaning of the said Section XIV or any subsequent Section of the said Act, unless such debt was incurred by the said Prince Azeem Jah Bahadoor actually and *bonâ fide* on behalf and for the use of the said Nabob."

MR. SCONCE desired to know the bearing of this Section. The question he wished to ask was as to the words "unless such debt was incurred by the said Prince Azeem Jah Bahadoor actually and *bonâ fide* on behalf and for the use of the said Nabob." Was the creditor expected to prove that he lent his money to the Regent with the knowledge that the Regent was borrowing it in good faith on behalf of the Nabob? Now in the Despatch which had been read, one of the principal reasons for disallowing the former

Act was that the claimants should not be called upon to offer an impossible amount of proof. The creditors might be expected to show that they actually and in good faith lent their money to the Regent, but how could they know and prove the purpose with which the Regent took the money, so that the burden of proof under the law should, as to the dealings of the Regent with his nephew, lie on them; would the Government now invert that onus and throw it upon the creditors?

MR FORBES said, Act XVI of 1859 had been repealed, simply and solely because it introduced a new element of proof, which had been omitted from the present Bill. If the Honorable Member for Bengal would propose a substantive motion, he (Mr. Forbes) could understand what the Honorable gentleman meant. At present he objected to what existed, but did not suggest how he proposed to meet the objection. It appeared to him (Mr. Forbes) that the burden of proof would lie on the Government, who would have to show that the debts were not contracted by the Regent in good faith on behalf of the Nabob. He repeated that the Section was drawn in accordance with the suggestion made in the 10th paragraph of the Secretary of State's Despatch, and the explanatory part of that Section would no doubt be made use of in any future trial that might come on to which it might be applicable.

MR. SCONCE asked if the Honorable and learned Chairman was satisfied that the construction of the Honorable Member for Madras was correct.

THE CHAIRMAN said, he did not profess to offer any legal construction of the Act It would be the duty of the Madras Judges to do so. Every Member of this Council should act on his own construction of a proposed enactment, and propose his own amendments accordingly. If he were to express his opinion as to the proper construction of the words of the present Bill and the Madras Judges should put a different construction upon it, it might be said hereafter that he had misled the Council. If the Honorable Member for Bengal entertained any doubt as to the construction of the words, he might propose such an amendment as would express his views beyond all doubt. What he understood to be the meaning of the Act was this. During the minority of the late Nabob of the Carnatic, the Nabob's Uncle, Prince Azeem Jah, was appointed to conduct the affairs of the Circar as Regent. When the Nabob came of age, instead of finding, as he expected, a surplus in his treasury, he found that there were creditors having large claims against him. The claimants were not persons who had any just or equitable claim against the Government. They were parties who had lent the Regent money at an exorbitant rate of interest, because they knew they were incurring a risk, and had probably calculated on the possibility of their never being repaid. The Nabob, when he attained his majority, repudiated these debts, with the exception of a few bonds which the Nabob, out of consideration for his uncle, had offered to pay, and of which he did pay a portion. When it was decided that the Carnatic lapsed, the Government very liberally undertook to pay the debts of the late Nabob. In doing so, they never undertook to pay debts which the Nabob had, in his life-time, repudiated, and which would not have been paid by him or by his heirs, if the Carnatic had not lapsed to the Government. The Government merely undertook to pay debts justly incurred for the Nabob. In a case which was brought before the Supreme Court at Madras, the Court, whilst deciding in favor of the Government, expressed an opinion that all debts incurred in the name of the Nabob were debts within the meaning of the Act. Prince Azeem Jah was examined at the trial, and he stated on oath that he never incurred those debts on behalf or for the use of the Nabob, and upon that evidence the Court decided in favor of the Government and against the creditor. The Advocate General however came forward and pointed out that, according to the

construction which the Court had put upon the Act, judgment must be given against the Government for a sum of nearly half a million sterling if the claimants should succeed in proving, to the satisfaction of the Court, that the money, whether raised for or applied to the use of the Nabob or not, was borrowed in his name, and that evidence to that point would of course not be wanting. In accordance therefore with the suggestion of the Madras Government, an explanatory Act was passed, which declared that no debt contracted by the Regent during the minority of the Nabob should be deemed a debt within the meaning of Act XXX of 1858, unless it should be proved that it was necessary and proper that such debt should be incurred on behalf or for the use of the Nabob, and that the same was so incurred. The Secretary of State had taken exception to these latter words, and thought that it cast upon the claimants too heavy a burden of proof. The Section had been framed in accordance with the suggestion of the Secretary of State. He thought it very advisable that there should be no lapse of time between the repealing of the one Bill and the passing of the other. It would be left to the Madras Court to decide what proof *primâ facie* would be required. He did not think that we could lay down any rules on the subject. The Madras Court would be guided by its own rules as to the description of evidence which was necessary. It appeared to him that the Section, as it stood, was quite correct, and he should vote in support of it. If the Honorable Member had any amendment to propose, it could be put to the Council.

MR. SCONCE said, he would again appeal to the Honorable and learned Chairman as to the construction of this Section. It was true that the Section was framed according to the words suggested by the Secretary of State, but it did not go far enough. It stopped halfway. In the same paragraph the Secretary of State went on to explain his meaning as follows :—

"While on the one hand the Government should be protected against liability for the private debts of the Regent, on the other hand the claimant should not be called upon for an impossible amount of proof, and where, in the case of a debt proved to have been incurred by the Regent, the question of liability is doubtful, the Government, like any other defendant, should be required to prove its right of exemption from responsibility for the claim."

The Secretary of State first referred to the question of proof of the actual debt, and then followed the question whether the Regent had contracted the debts so incurred in good faith for his nephew. To meet that, the Secretary of State suggested that, if the Government resisted the claim on any such ground, they must show some special ground for repudiating the debt. The creditors must first show that, as he (Mr. Sconce) understood the Secretary of State to mean, the Regent had borrowed the money; and that being done, if there was doubt of liability, the Government should prove that he had borrowed it in bad faith. The debts would be recognized unless the defendant, that is the Government, should prove that the contract had not been entered into actually and in good faith on behalf of the Nabob. The Honorable Member for Madras had just said that he understood the Section in this sense. But, as he (Mr. Sconce) had already said, he felt much doubt whether the Section as drawn could be so construed; but if the Honorable and learned Chairman was satisfied that the Section, as it stood, was correct and would not be misunderstood, he (Mr. Sconce) would make no further objection.

SIR BARTLE FRERE said, he thought that the Honorable Member for Bengal required rather more than could be expected in calling upon the Honorable and learned Chairman to pronounce a legal opinion upon any given words in any Section. Let us compare the words of the Section just repealed with the words of the Section proposed to be re-enacted. The words of the repealed Section were "unless it shall be proved that it was necessary and proper that such debt should be incurred on behalf or for the use of the said Nabob, and that the same was so

contracted." Now no doubt these words did involve a very large questi n which the creditors of the late Nabob or of his Regent might find some difficulty in proving. But the words of the Section which the Honorable Member for Madras proposed to re-enact were "unless such debt was incurred by the said Prince Azeem Bahadoor actually and *bonâ fide* on behalf and for the use of the said Nabob." The Despatch of the Secretary of State had already been ordered to be printed, so that the Act and Despatch would both go down to Madras and be read together. The one would be read as illustrating the other. They would be made use of by the able Advocates whom the creditors doubtless would have. Prince Azeem Jah had shown no disposition to thwart justice, and he would probably continue to act as honestly for the future. He (Sir Bartle Frere) thought that there could be no practical doubt as to the construction of the Section; but if the Honorable Member felt any doubt with regard to any words, it was competent to him to suggest any amendment with the view of removing those doubts.

SIR MORDAUNT WELLS said, he had no doubt whatever as to the meaning of the words referred to by the Honorable Member for Bengal. He thought it necessary to notice what appeared to him to be a very curious circumstance. The Secretary of State had taken exception to the repealed Section on the ground that it introduced a new element of proof. But he (Sir Mordaunt Wells) would observe that the words used in the Despatch of the Court of Directors were "that only sums should be admitted which can be *proved to have been advanced.*" As both Sections were the same in effect, he entirely agreed with the Honorable and learned Chairman that it was not worth while to criticise the words used in the Despatch of the Secretary of State.

The Section was then put and carried, and the remainder of the Bill also was passed as it stood.

The Council having resumed its sitting the Bill was reported.

MR. FORBES moved that the Bill be read a third time and passed

The Motion was carried, and the Bill read a third time.

LAND FOR PUBLIC PURPOSES.

MR. FORBES moved the second reading of the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes.")

The Motion was carried, and the Bill read a second time.

SIR BARTLE FRERE begged to ask the Honorable Member for Bengal, whether he had any intention to proceed with the Bill which he had introduced for the same purpose some time ago.

MR. SCONCE said, he proposed to abandon the Bill.

SIR BARTLE FRERE said, there were portions of that Bill on which the Council were agreed. There were others again in favor of which he recollected he had voted against his own *primâ facie* convictions on the strong assurance of his Honorable friend, that the Executive Government considered the Bill to be absolutely necessary for the construction of Railways in Bengal. The material parts of that Bill might be imported into the present measure.

MR. SCONCE said the Honorable Member for Madras was at liberty, and probably would find no difficulty in transferring any provisions he might think beneficial, to this Bill. The main provision of his (Mr. Sconce's) Bill had been thrown out by the Council, and he had not thought it necessary afterwards to go on with the measure.

THE VICE-PRESIDENT thought it probable that the Honorable Member for Madras might not consider the provisions of the other Bill worthy of adoption.

MR. FORBES said, the Bill now introduced by him would, after it had passed a Select Committee, come before a Committee of the whole Council, and if the Honorable Member of Council (Sir Bartle Frere) thought that any of the Clauses in the Bill brought in by the Honorable Member

for Bengal were important, it would be competent to him to propose the introduction of them into the present Bill.

The Motion was then put and carried, and the Bill read a second time.

RAILWAYS.

MR. FORBES moved the second reading of the Bill "to amend Act XVIII of 1854 (relating to Railways in India.)"

The Motion was carried, and the Bill read a second time.

INDIAN PENAL CODE.

THE CHAIRMAN moved that the Council do resolve itself into a Committee on "The Indian Penal Code," and that the Committee be instructed to consider the Code in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section 1 of Chapter I was passed after an amendment, which provided for the Code taking effect on the 1st of May 1861.

Section 2 provided as follows :—

"Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said Territories after the said day of ,"

THE CHAIRMAN said, there seemed to him to be some misapprehension as to the effect of this Code. It was thought that the effect of it would be to render Europeans liable to be tried by Courts to whose operation they were not at present subject. But this Act had nothing to do with the trial of persons. It only defined offences and laid down the punishments for those offences. If the Act should be passed, persons would be liable to be tried by the same tribunals as at present. The trial of Europeans by the Mofussil Courts would depend, not on this Code, but upon the Code of Criminal Procedure. As that Code now stood, European British subjects were expressly exempted from the jurisdiction of the Courts of the country, and it was provided that they should only be liable to be tried by the Supreme Court, to which they could only be committed by a European Magistrate. The intention of this Code was to provide one uniform system of Criminal law for the whole of India. The laws now in force in the Regulation Provinces of Bengal and Madras enacted that offences not provided for by the Regulations should be tried according to the Mahomedan law, and therefore it was necessary at each Court to employ a Mahomedan Law Officer for such cases. It was the intention of this Code to supersede the Mahomedan law, and by defining offences and punishments, to do away with the necessity of referring to a Mahomedan Law Officer. It would provide a uniform Criminal Law throughout India, applicable alike to the Supreme Court and to the Mofussil Courts. He thought it necessary to make this explanation, because he believed there was some misapprehension on the subject.

The Section was then passed after an amendment in the last part, which made it conclude as follows :—

"Of which he shall be guilty within the said Territories on or after the said 1st day of May 1861."

Section 3 was passed as it stood.

THE CHAIRMAN here proposed the restoration of Section 4 of the Original Bill with certain modifications. He did not recollect why the Section had been struck out by the Select Committee. If this Act were to apply only to British India and not to offences committed by servants of Government in Foreign States, difficulty might arise as to the law by which such persons were to be tried.

The Section as proposed to be restored was as follows :—

"Every servant of the Queen shall be subject to punishment under this Code, for every act or omission contrary to the provisions thereof of which he shall be guilty within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or

engagement heretofore entered into with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any Government of India, whilst in such service on or after the said 1st day of May 1861."

The Section was passed after some discussion respecting the powers of the Council to legislate in respect of offences committed out of British India, and as to the effect of the Statutes 26 Geo. III, c. 57, s. 29, and 33 Geo. III, c. 52, s. 67.

Section 4 was passed after a verbal amendment.

Section 5 was a new Section proposed to be added by the Select Committee, and provided as follows :—

"Nothing in this Act is intended to render any person liable to be tried by a Court Martial for any act or omission for which he is not now liable to be tried and punished by a Court Martial."

After some discussion respecting the necessity for adding the qualifying Clause proposed by the Select Committee, the Section was negatived.

The Clerk of the Council was here authorized to number the Sections of the Code consecutively throughout.

Sections 1 to 6 of Chapter II were severally passed as they stood.

Section 7 provided as follows :—

"The word 'public' includes any class of the public or any community.

Illustration.

"An injury done to the villagers of a particular village is a public injury."

SIR MORDAUNT WELLS doubted the necessity of retaining the illustration.

After some conversation, the illustration was negatived, and the Section, as amended, then passed.

Section 8 was passed as it stood.

THE CHAIRMAN moved the introduction of the following new Section after Section 8 :—

"The words 'servant of the Queen' denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Vic c. 106 entitled an Act for the better Government of India."

Agreed to.

Section 9 was passed after a verbal amendment.

Section 10 was passed as it stood.

Sections 11 and 12 were severally passed after verbal amendments.

Section 13 provided as follows :—

"The word 'Judge' denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a*) A Collector exercising jurisdiction in a Summary Suit under Regulation VIII of 1831 of the Bengal Code, is a Judge.

(*b*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c*) A Member of a Punchayet which has power, under Regulation VII of 1816 of the Madras Code, to try and determine suits, is a Judge.

(*d*) A Magistrate exercising jurisdiction in respect of a charge in which he has power only to commit for trial to another Court, is not a Judge."

SIR MORDAUNT WELLS took exception to the illustrations in this Section also. The Section was sufficiently clear to render unnecessary any illustration of it. Besides this Chapter was merely a Chapter of definitions.

MR. SCONCE thought illustration (*a*) to be an important one, and would deprecate its omission. The words of the Clause would have to be adapted to the present state of the Law.

THE CHAIRMAN said, he considered illustration (*d*) to be very useful. Indeed he thought the whole of them to be so, especially with reference to some of the classes of persons who would have to administer this Code. There would be the same use in the illustrations as there was in the quotation of cases supporting principles in Text-books. The illustrations would be tantamount to decisions of the House of Lords, which were of binding authority.

SIR MORDAUNT WELLS said, what he meant to say was that, instead of the persons who had to carry out the Code considering the Section, they would read the illustration. As an English lawyer, he must say he was opposed to the principle of such legislation.

THE CHAIRMAN said, the object of the Law Commissioners in preparing these illustrations was to prevent the necessity of the Sudder Court issuing Circular Orders. This was what the Commissioners said with regard to them :—

"One peculiarity in the manner in which this Code is framed will immediately strike your Lordship in Council. We mean the copious use of illustrations. These illustrations will, we trust, greatly facilitate the understanding of the Law, and will at the same time often serve as a defence of the Law. In our definitions we have repeatedly found ourselves under the necessity of sacrificing neatness and perspicuity to precision, and of using harsh expressions because we could find no other expressions which would convey our whole meaning, and no more than our whole meaning. Such definitions standing by themselves might repel and perplex the reader, and would perhaps be fully comprehended only by a few students after long application. Yet such definitions are found, and must be found, in every system of Law which aims at accuracy. A legislator may, if he thinks fit, avoid such definitions and by avoiding them he will give a smoother and more attractive appearance to his workmanship; but in that case he flinches from a duty which he ought to perform, and which some body must perform. If this necessary but most disagreeable work be not performed by the lawgiver once for all, it must be constantly performed in a rude and imperfect manner by every judge in the empire, and will probably be performed by no two judges in the same way. We have, therefore, thought it right not to shrink from the task of framing these unpleasing but indispensable parts of a Code. And we hope that when each of these definitions is followed by a collection of cases falling under it, and of cases which, though at first sight they appear to fall under it, do not really fall under it, the definition and the reasons which led to the adoption of it will be readily understood. The illustrations will lead the mind of the student through the same steps by which the minds of those who framed the law proceeded, and may some times show him that a phrase which may have struck him as uncouth, or a distinction which he may have thought idle, was deliberately adopted for the purpose of including or excluding a large class of important cases. In the study of geometry it is constantly found that a theorem, which read by itself conveyed no distinct meaning to the mind, becomes perfectly clear as soon as the reader casts his eye over the statement of the individual case taken for the purpose of demonstration. Our illustrations, we trust, will in a similar manner facilitate the study of the law."

SIR BARTLE FRERE must say that he thought his Honorable and learned friend (Sir Mordaunt Wells) need be under no apprehension that the value of the Code would be impaired, by making it too clear and easily comprehensible by men not professionally trained as lawyers. He (Sir Bartle Frere) had carefully examined the Code, and while greatly admiring the extraordinary amount of care and ability which had been bestowed on it, he did not think there was any such danger as his Honorable and learned friend anticipated, of its being made too plain and easy of comprehension. It was their duty to make the Code as clear and easy to be understood as possible. It seemed to him that the illustrations would serve as cases ready decided, and would prove of great assistance to the Judge, however learned and able he might be. Perhaps his Honorable and learned friend would not object to them if, instead of calling them illustrations, they were to be called extracts from case books, for they were in fact nothing more than cases ready decided, with the additional advantage that they were cases so framed as exactly to fit the point to be illustrated.

SIR MORDAUNT WELLS said, his Honorable friend had quite misunderstood his objection. What he (Sir Mordaunt Wells) meant to say was that, if illustrations were introduced in some parts, and not in all, there would be great danger of misleading those by whom the law would be administered. If an Officer were unable to comprehend the text, let him consult the Advocate General or the Superior Judge in the District, instead of having to rely on imperfect illustrations. He (Sir Mordaunt Wells) must say that he was strongly opposed to this sort of legislation. He had found no difficulty whatever

in construing the various Acts passed by this Council, and he was clearly of opinion that a person who was incapable of understanding the Code without the help of illustrations, was incompetent for the office of Judge.

THE CHAIRMAN said, the object of illustrations merely was that they should serve as a guide. They were never intended to embrace every case provided for by the Sections to which they severally related. It was no doubt very desirable to have good English lawyers as Judges. But in this country we were compelled by necessity to employ Native Judges, and if they required guides, they ought to have them. It appeared to him that we ought to make our laws as clear as we could. But it did not follow that, because the law was clear, we ought to have incompetent Judges to administer it. We ought not to be deterred from making our laws as clear and as intelligible as we could by any apprehension that we should have bad Judges or worse Judges than we had heretofore. As to some parts of the Code having illustrations, and not others, he could only say that no care or trouble had been spared by the Select Committee in making the Code as complete as possible. The Committee were most anxious to avoid introducing too many illustrations, and had in several cases moulded and remoulded a Section with the view of making it as clear as possible. The Committee had introduced illustrations only in those cases where it was thought that difficulty might still arise. If there was any Section which his Honorable and learned friend would suggest as requiring illustration, he (the Chairman) would gladly assist in its preparation.

SIR MORDAUNT WELLS said, he should be the last person to speak lightly of the care and labor which had been bestowed upon the Code by the Select Committee. He had read the Code through very attentively, and must say that it could not be rendered in more clear and intelligible terms than those in which it now stood; so much so, indeed, that he saw no necessity for the retention of the illustrations. He should therefore on principle move that the illustrations in this Section be struck out.

The question being put, the Council divided—

Aye 1.	*Noes* 5.
Sir Mordaunt Wells.	Mr. Sconce.
	Mr. Forbes.
	Mr. Harington.
	Mr. Beadon.
	Sir Bartle Frere.
	The Chairman.

So the Motion was negatived, and the Section was then passed after a trifling amendment in illustration (*a*).

Section 14 was passed as it stood.

Section 15 defined what a "public servant" meant.

A verbal amendment was made in Clause 1; and Clauses 1 and 2, with some modification, were incorporated together.

SIR MORDAUNT WELLS objected to the illustration—"A Municipal Commissioner is a public servant," as being exceedingly trivial.

THE CHAIRMAN was disposed to concur in the objection and thought that the illustration was not quite accurate, and moved that the illustration be omitted.

After some conversation, the Council divided—

Ayes 3.	*Noes* 4.
Sir Mordaunt Wells.	Mr. Sconce.
Mr. Beadon.	Mr. Forbes.
The Chairman.	Mr. Harington.
	Sir Bartle Frere.

So the Motion was negatived, and the Section was then passed.

Section 16 was passed as it stood.

Sections 17 to 19 were passed after amendments.

Section 20 was passed as it stood.

Section 21 defined the word "document."

Explanation 1 contained the following illustrations:—

"A writing, expressing the terms of a contract, may be used as evidence of the contract. It is therefore a document.

A Check upon a Banker is a document.

A Power of Attorney is a document.

A Map or Plan is a document.

A Writing containing directions or instructions is a document."

SIR MORDAUNT WELLS doubted the accuracy of these illustrations. Could it be said in every case that a writing, expressing the terms of a contract, might be used as evidence of that contract? And could it be said that a map or a plan was a document?

THE CHAIRMAN said, the terms of the first illustration might be thus amended :—

"A writing, expressing the terms of a contract which may be used as evidence of the contract, is a document."

The illustration, as thus proposed to be amended, was agreed to.

A discussion then followed on the 4th illustration, which was finally passed as follows :—

"A map or plan, which is intended to be used, or which may be used as evidence, is a document."

Explanation 2 contained the following illustration :—

"A writes his name on the back of a Bill of Exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the Bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words 'pay to the holder' or words to that effect had been written over the signature."

SIR MORDAUNT WELLS said, this illustration also was objectionable. The proposition of law stated in it might be qualified by some future decision of the Courts of Law in England. Were this illustration and that decision then to be in contrast, and if so, which was to prevail? The Judge, in trying a case under this Code, might entertain serious doubts as to the legal effect of this Explanation 2 in that particular case, and nevertheless this illustration would be quoted as decisive, when the Judge might be by no means satisfied. For these reasons, he (Sir Mordaunt Wells) thought that we ought to confine our illustrations to facts, and not to extend them to legal propositions. He should therefore propose the omission of this illustration.

THE CHAIRMAN said, the principle of this Code was to lay down a general definition which would meet all cases, and then to quote a case in illustration of that definition. The principle appeared to him to be a correct one, for if there was no objection to the Council laying down a definition, he saw none to its introducing an illustration, which must be regarded as an authoritative declaration of what the law ought to be on that particular subject. It did not follow, however, that the illustration would meet every case. There would be many in which the Judge must apply the definition without the assistance of illustrations.

SIR BARTLE FRERE said, so far as the Natives were concerned, he was confident they would find the illustration under discussion of great assistance. He would refer to the Code Napoleon, and to other attempts which had been made in America and elsewhere to introduce an uniform Code of laws. It had invariably been found that, however carefully such a Code might be drawn up, it was always impossible to lay down the law so clearly as to dispense with the illustration afforded by decided cases, and there were many parts of such Codes which remained for years in a state of most inconvenient uncertainty, owing to no case in point being decided by authority. These illustrations would go far to remedy this defect in the present Code; they were, in fact, selected cases so framed as to illustrate doubtful points and would be of the greatest assistance in the main object of making them clear, intelligible, and free from doubt.

THE CHAIRMAN said, he would read an extract from the Report of the Law Commissioners, to show what their views on this subject were. They said :—

"There are two things which a legislator should always have in view while he is framing laws : the one is, that they should be as far as possible precise ; the other, that they should be easily understood. To unite precision and simplicity in definitions intended to include large classes of things and to exclude others very similar to many of those which are included, will often be utterly impossible. Under such circumstances it is not easy to say what is the best course. That a law, and especially a penal law, should be

drawn in words which convey no meaning to the people who are to obey it, is an evil. On the other hand, a loosely worded law is no law, and to whatever extent a legislature uses vague expressions, to that extent it abdicates its functions, and resigns the power of making law to the Courts of Justice.

On the whole, we are inclined to think that the best course is that which we have adopted. We have, in framing our definitions, thought principally of making them precise, and have not shrunk from rugged or intricate phraseology when such phraseology appeared to us to be necessary to precision. If it appeared to us that our language was likely to perplex an ordinary reader, we added as many illustrations as we thought necessary for the purpose of explaining it. The definitions and enacting Clauses contain the whole law. The illustrations making nothing law which would not be law without them. They only exhibit the law in full action, and show what its effects will be on the events of common life."

One Judge might place one construction on a law, and another another. But we stood in a different position from the Judges, because we should be illustrating a law which we were making ourselves. The following was what Mr. Macleod said on this matter :—

"The reviewers of the Code seem to have not quite correctly understood an expression in the letter with which we submitted the Code to the Government of India. 'The definitions and enacting Clauses,' it is there aid, 'contain the whole law.' From this it has been concluded that the illustrations were not to have the force of law. But, understanding the phrase 'contain the whole aw,' in the sense it was meant to bear, and lwhich the context, I think, fixes on it, all that can be rightly inferred, is what is stated in the next sentence, that the 'illustrations make nothing law which would not be law without them,' a remark which applies to new illustrations as well as to the original ones. The function of the illustrations, whether original or new, is, as their name indicates, to illustrate. They do this, indeed, with full legislative authority, and accordingly have all the force of law. But still the whole law, so illustrated by them, must be considered to be contained in the definitions and enacting Clauses."

The illustrations were as much law as if they were decisions passed by the House of Lords, the highest judicial authority. If the illustrations were wrong, let the Legislature alter them. But he (The Chairman) apprehended that the illustrations should be the law of the land, and that persons ought to be bound by them just in the same way as if we were to pass an Act to the same effect. It might be said, however, that it was not right in an illustration to lay down the meaning of an expression, and that the illustration now under discussion went too far in saying that "the meaning of the endorsement, as explained by mercantile usage, is that the Bill is to be paid to the holder." He had no objection, if his Honorable and learned friend wished, to omit those words and to alter the illustration as follows :—

"If A writes his name on the back of a Bill of Exchange payable to his order, the endorsement is a document, &c."

SIR MORDAUNT WELLS said, it appeared to him perfectly clear that the language of the Commissioners did not bear out the construction which his Honorable and learned friend had put upon it. He (Sir Mordaunt Wells) was decidedly of opinion that the system of introdu ing legal illustrations was not only a most objectionable, but an entirely novel one. It could not be shown in a single Act of Parliament. He therefore felt that we ought not to be called upon to introduce a legal proposition to illustrate a definition. When we went to Chapter III relating to offences, it would be a different thing altogether. But he objected entirely to the introduction of legal propositions in a Chapter of definitions. He rather thought that the illustrations would throw doubt upon the text.

THE CHAIRMAN said, he did not think that the illustrations were intended to be legal propositions. This was what the Law Commissioners said with regard to this matter :—

"Thus the Code will be at once a Statute book and a collection of decided cases. The decided cases in the Code will differ from the decided cases in the English law books in two most important points In the first place our illustrations are never intended to supply any omission in the written law, nor do they ever, in our opinion, put a strain on the

written law. They are merely instances of the practical application of the written law to the affairs of mankind. *Secondly*, they are cases decided, not by the Judges, but by the Legislature, by those who make the law, and who must know more certainly than any Judge can know what the law is which they mean to make."

He did not mean to say that none of the illustrations as they now stood were wrong though every endeavor had been used to make them as correct as possible. It was impossible to say that in a work of this kind there might not be some mistakes. If any Honorable Member were to show that an illustration did not fall within or went beyond the definition to which it apparently belonged, that would certainly be a good reason why that illustration ought not to be retained.

SIR MORDAUNT WELLS' Motion for the omission of the illustration being then put, the Council divided.

Aye 1.	*Noes.* 6.
Sir Mordaunt Wells.	Mr. Sconce.
	Mr. Forbes.
	Mr. Harington.
	Mr. Beadon.
	Sir Bartle Frere.
	The Chairman.

So the Motion was negatived, and the Section was then passed.

Sections 22 to 28 were severally passed as they stood.

Section 29 was passed after a verbal amendment.

Sections 30 to 44 were severally passed as they stood.

The further consideration of the Code was then postponed, and the Council resumed its sitting.

CRIMINAL JUSTICE (SUPREME COURTS).

SIR MORDAUNT WELLS postponed the Motion, of which he had given notice for this day, to call the attention of the Council to the evidence given before the Indigo Commission by the Honorable Mr. Eden, a Member of the Bengal Civil Service, so far as his evidence referred to the administration of Criminal Justice in Her Majesty's Supreme Court. He said that the evidence had not been printed and was not yet before the Council, and the evidence might necessitate the bringing in of a Bill.

CARNATIC ESTATE.

MR. FORBES moved that Sir Bartle Frere be requested to take the Bill "to repeal Act XVI of 1859," and the Bill "to explain Act XXX of 1858 (to provide for the administration of the Estate, and for the payment of the debts of the late Nabob of the Carnatic)," to the Governor-General for his assent.

Agreed to.

LICENSING OF TRADES AND PROFESSIONS.

MR. HARINGTON said that, in the List of Select Committees printed at the commencement of the present month for the information of the Council, he observed that the Bill brought in by him last year, "for the licensing of Trades and Professions," was still entered He begged to move that the Select Committee on that Bill be now discharged.

Agreed to.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

MR. FORBES moved that the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)" be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

RAILWAYS.

MR. FORBES moved that the Bill "to amend Act XVIII of 1854 (relating to Railways in India)" be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

The Council adjourned.

The Chairman

Saturday, August 18, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble C. Beadon,	A. Sconce, Esq.,
H. B. Harington, Esq.,	and
	Hon'ble Sir M. L. Wells.

CARNATIC ESTATE.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor General had assented to the Bill "to repeal Act XVI of 1859" and the Bill "to explain Act XXX of 1858 (to provide for the administration of the estate and for the payment of the debts of the late Nabob of the Carnatic)."

DIVORCE LAW (NATIVE CHRISTIANS)

THE CLERK presented to the Council a Petition from Lalchund Mookerjee and others, praying for a divorce law affecting Native Christians

SIR BARTLE FRERE moved that the above Petition be printed

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. FORBES presented the Report of the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca.")

INCOME TAX.

SIR BARTLE FRERE presented the Report of the Select Committee on the Bill "to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices);" and said that he proposed at a later period of the day to move for a suspension of the Standing Orders with a view to carrying the Bill through its remaining stages.

VACATIONS (CIVIL COURTS.)

MR. SCONCE moved the first reading of a Bill "to amend the law relating to vacations in the Civil Courts within the Presidency of Fort William in Bengal." He said, the Bill which he now had the honor to offer to the consideration of the Council applied to the Bengal Presidency alone, and its object was to amend the law in force for the purpose of regulating holidays in the Civil Courts of that Presidency. The law, as it existed in Bengal at present, sanctioned two periodical vacations, the Dusserah, a Hindoo Festival, and the Mohurrum, a Mahomedan one. In the former case, the Courts were closed for thirty days, and in the latter for fifteen days, making altogether forty-five days. But it happened that the Courts, under the orders of the Sudder Court, enjoyed much longer holidays than those sanctioned by law, the holidays being in all sixty-seven days. So that although forty-five days might be said to be the legal holidays, there were still twenty-two days, which, though not illegal, were sanctioned by the Sudder Court over and above the law. It had often been a subject of complaint, that too much time had been consumed both by the legal and extra holidays taken by the Civil Courts. The total period for the Courts being closed was sixty-seven days, and it was now proposed, not by the law to reduce that number, but to change the law so far as it absolutely required the Courts to be closed for fifteen days during the Mohurrum and for thirty days during the Dusserah. The Sudder Court already had the power in a special case to disallow a part or the whole of these holidays, and it seemed to be desirable to extend the power of the Court in that respect generally as regards all the Courts. He (Mr. Sconce) proposed, therefore, to set aside the law as it now stood and to substitute another requiring the Sudder Court, under such rules as the Government might issue, to publish annually a list of holidays to be enjoyed throughout the year. The law as it now stood was exceptional, for it specified only two of the

festivals observed as Native holidays; and he might observe that the holidays observed in other public Offices were allowed without the authority of any law. He proposed, therefore, little more now, than to extend to the Civil Courts the rule as to holidays which applied to other Offices. The words of the enacting Clause of the Bill which he was now about to introduce were as follows:—

"Subject to such orders as may from time to time be issued by the Governor-General of India in Council or by the local Government, the Courts of Sudder Dewanny Adawlut in the Presidency aforesaid shall prepare a list of days to be observed in each year as close holidays in such Courts and in the Courts respectively subordinate to them, and such list shall be ordinarily published at the commencement of each year in the Official Gazette of the Presidency or place in which each Sudder Court is held."

That was simply the proposition which he now ventured to make, and he begged to move that the Bill be read a first time.

The Bill was read a first time.

WRECKED BOATS.

MR. SCONCE moved the second reading of the Bill "for the preservation of property recovered from Wrecked Boats"

SIR BARTLE FRERE said, he had read through this Bill very carefully, and he begged, before the Motion for the second reading was carried, to suggest to the consideration of his Honorable friend, the Member for Bengal, the necessity of making a very considerable change in the Bill before it was finally passed into law. In the first place he would remark that he believed here and everywhere else the Magistrate of a District exercised in his general capacity the function which might be called the general prerogative of the Government, to take care of all property of which the owner was unable to take care for himself, to retain possession of the property until the owner applied for it, or to make such other disposition as he might consider most proper or necessary; or in the event of there being no claimant, ultimately to dispose of the property for the benefit of the Crown. The mode in which the Bill had been drafted was to create a new office of Receiver of Wrecks, an office which would be created not only in those places where wrecks were common, but also in those places where wrecks were of rare occurrence. He (Sir Bartle Frere) did not know whether it would be possible to point out the particular localities where the Bill would be required; but it struck him very much on reading the Bill, that it would be very much improved if the main provisions were shortened, and the duties which were to be discharged by the Receiver were to be left in the hands of the Magistrate of the District, with the power, now proposed to be conferred on the Receiver, to take charge of wrecked property, to call upon the community to assist him in recovering the property, to make over the property to the owner, if there was any, or to take it for the Government if there was no owner, and to allow salvage if the law did not already authorize the Magistrate to do so. It appeared to him (Sir Bartle Frere) that the Bill, by creating an office which was not required, would relieve the Magistrate of duties which already devolved upon him, and he (Sir Bartle Frere) was disposed to think that it would rather complicate instead of simplifying matters.

There were one or two provisions of the Bill to which he entertained particular objection, and which he would take leave to point out to the Honorable Member with a view to their amendment when the Bill went into Committee. Section V was the Section to which he would draw particular attention. It provided as follows:—

"In places where no Receiver of Wreck shall be appointed, or when the Receiver or the person deputed by him shall be unable to attend as above required, if any person assist in the preservation of any portion of a boat, or of the cargo, or any article belonging to the boat, the person so assisting, or one of them, shall be bound to prepare an inventory of the property recovered, and furnish a copy of the same to the Receiver of Wreck or to the nearest Police Officer, and any person as aforesaid who shall without good

cause fail to comply with the provisions of this Section, shall be liable to a fine of twenty Rupees."

Now he (Sir Bartle Frere) thought his Honorable friend would see, upon consideration, that this was a most dangerous provision to enact, for it would only have the effect of deterring parties from rendering assistance in cases of wrecks. To require the lower orders of natives to prepare an inventory of property they might have saved from wrecks, and subject them to a fine of twenty Rupees if they failed to do so, was, he must say, a most injudicious course they could adopt, and one which would never answer. The object should rather be to give Magistrates the power of assisting boats wrecked, and of awarding salvage to those who assisted in the recovery of the wrecked property, but not, as this Section proposed to do, to throw upon an illiterate person a responsibility which did not now exist.

MR. SCONCE said, he was happy to assure the Council that he thoroughly agreed with all that his Honorable friend had said as to the general principle of the Bill. It was not his (Mr. Sconce's) purpose in any way to weaken the powers of a Magistrate, but rather to strengthen them; for the first Section provided :—

"It shall be lawful for the local Government to appoint or require the Magistrate of any District to appoint one or more Receivers of Wreck in such District, and any Receiver so appointed shall be guided by such instructions, not contrary to any of the provisions of this Act, as the Magistrate, with the sanction of the local Government, may issue, to give better effect to the same."

It would be seen, therefore, that the Receiver, whoever he might be, would be entirely subordinate to the Magistrate. He had inadvertently omitted to provide in the Bill, as it was his purpose to have done, that any Police Officer might be appointed a Receiver, but at the same time it should be remembered that Police Stations might be situated at considerable distance from the rivers, and that it might be desirable to appoint other persons than Police Officers to exercise the duties of Receivers. As he had said before, it was not his purpose to weaken the power of the Magistrate, and if that purpose could be more fully brought out in Committee, he should be glad to adopt the suggestion of the Honorable Member. As to his remarks with respect to Section V, which required parties who assisted in carrying off property to account for them, he (Mr. Sconce) would only say that that was based on the assumption that it was unlawful for strangers to pilfer property they were asked to protect. He might refer the Council to the English Act 17 and 18 Vic. c. 104, s. 443, which provided that all cargo and other articles belonging to such wrecks should be delivered to the Receiver; and any person, whether he was the owner or not, who secreted or kept possession of such articles as he had saved from the wreck, should incur a penalty not exceeding £100. He (Mr. Sconce) had adopted that provision in the English Act, and he considered it right and proper that, in order the better to prevent strangers from seizing and secreting wrecked cargo, should be added a preliminary provision requiring all persons concerned in the recovery of such property to give a definite account of their proceedings That was his view in introducing the 5th Section of this Bill, and Section 450 of the Merchant Shipping Act would be found to embody not very dissimilar provisions; but at the same time he was ready to adopt the suggestions of the Council.

THE VICE-PRESIDENT said, it appeared to him that Section V was open to the objection which had been taken by the Honorable Member (Sir Bartle Frere.) It did not provide, as in the English Act, that, if any person secreted or kept possession of wrecked property, or refused to deliver the same to the Receiver, he should be liable to a penalty, nor that he should make an inventory of all property of which he should take possession, but that all persons assisting in the recovery of wrecked property, who should neglect or refuse to make out an inventory of the same, should be so liable. Now

a dozen persons might assist in the saving of a wrecked boat, none of them might take away any property, but might merely assist in saving the same. If every one of them was to be compelled to prepare such an inventory it would certainly, as remarked by the Honorable Member (Sir Bartle Frere), deter persons from assisting in such cases.

Section II was also open to a great deal of objection. Under that Section the Receiver might compel any person he pleased, no matter who he was, or where he resided, to leave his business and go and assist in the recovery of a wreck. It would not be right to enact a provision in such general terms. The Section ran as follows:—

"When any boat is in distress, or stranded, or sunk on the shore of the sea, or on or near the bank of any tidal or inland river in British India, the Receiver of Wreck shall proceed to the place where the accident occurred, and unless the person in charge of the boat shall decline his assistance, he shall require all persons present, and others whom he may summon, to assist in preserving the boat, the lives of the crew, and the cargo, and any article belonging to the boat. The Receiver, if unable to act as herein provided, may by an order in writing depute any other person to exercise the authority by this Act in him vested."

Now he (the Vice-President) recollected the case of a steamer which had been wrecked in the river some short time ago, and her engines were lost. It would be very hard in such a case to take persons from their occupations and to keep them engaged for several days in assisting in recovering the wreck. It seemed to him that the Section in question gave too extensive a power. If the Honorable Member for Bengal agreed to alter these and other provisions in Committee, he (the Vice-President) would vote in support of the second reading; otherwise he considered the Bill to be open to very serious objections, and he should vote against it.

MR. BEADON said, the Honorable Member for Bengal, in framing this Bill, had made a mistake in applying the principle of the English Act, which related exclusively to wrecks at sea; whereas the proposed Bill was to be applicable to the wrecks of boats, and not only to wrecks at sea but in creeks and inland rivers also. Now, if officers were to be appointed throughout the country, whose special duty it would be to look after these wrecks, and to receive a commission for the same, great abuses would arise, which ought certainly not to be allowed. It appeared to him that the duty which the Bill imposed on Receivers of Wreck ought to be performed by the Police with a few simple rules to guide them. He would therefore suggest to his Honorable friend whether the better course would not be to withdraw the Bill altogether, and to bring in another, framed in accordance with the suggestions of his Honorable friend opposite (Sir Bartle Frere) and of the Honorable and learned Vice-President, because he (Mr. Beadon) was of opinion that unless this Bill underwent a radical change, it was not one which the Council could support.

MR. SCONCE said it was not difficult for him to satisfy the Council that the main objection taken by the Honorable Member on his right (Mr. Beadon) was entirely a mistake. The Honorable Member had said that the English Act referred exclusively to wrecks at sea. He (Mr. Sconce) would ask the permission of the Council to read the first two lines of Section 441 of the Merchant Shipping Act, which were as follows:—

"Whenever any ship or *boat* is stranded or in distress at any place on the shore of the sea, or *of any tidal water*."

Thus it would be seen that the Act did not merely apply to wrecks of ships at sea, but also of boats in tidal waters, and therefore it appeared to him, in drawing up the Bill, that the provisions of that Act were very appropriate to the rivers in this country, which were in fact inland seas.

The Honorable and learned Vice-President had taken certain objections to Section II, and he (Mr. Sconce) would say he had some scruple in adopting the apparently arbitrary provisions of this Section; but in framing the Bill, he (Mr. Sconce) had

endeavored to keep as closely as possible to the English Act, and a power recognized there might, he thought, be safely adopted here. In the English Act, it was provided that, on receiving intelligence of a wreck, the Receiver should forthwith proceed to the spot,

"and upon his arrival there, he shall take the command of all persons present, and assign such duties to each person, and issue such directions as he may think fit, with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof; and if any person wilfully disobeys such directions, he shall forfeit a sum not exceeding fifty pounds."

Again—

"The Receiver may, with a view to such preservation as aforesaid of the ship or boat, persons, cargo, and apparel, do the following things, (that is to say.)

(1) Summon such number of men as he thinks necessary to assist him.

(2) Require the master or other person having the charge of any ship or boat near at hand, to give such aid with his men, ship or boats as may be in his power.

(3) Demand the use of any waggon, cart, or horse, that may be near at hand;"

a penalty of £100 being prescribed for every one refusing to comply with the above.

THE VICE-PRESIDENT said, that applied to vessels stranded and in distress, not to sunken boats which were to be recovered for the benefit of the owners.

MR. SCONCE said, the English Act applied to boats in distress or stranded and to wrecks; and in preparing this Bill, his object was to provide as effectually as possible for the preservation of wrecked property. It might be that the provisions in this Bill could be amended. He had no intention to override the better judgment of the Council, and if it permitted the Bill to be read a second time, the necessary alterations might be made by the Select Committee to which it was his intention to refer the Bill.

The Motion was then put and carried, and the Bill read a second time.

PENAL CODE.

THE VICE-PRESIDENT moved that the Order of the Day for the adjourned Committee of the whole Council on the Indian Penal Code be postponed until after the disposal of the other Orders of the Day.

Agreed to.

CRIMINAL JUSTICE (SUPREME COURT).

The Order of the Day being read for "Sir Mordaunt Wells to call the attention of the Council to the evidence given before the Indigo Commission by the Honorable Mr. Eden, a Member of the Bengal Civil Service, so far as his evidence referred to the administration of Criminal Justice in Her Majesty's Supreme Court"—

SIR MORDAUNT WELLS said, the subject to which he was about to call the attention of the Council was one of the deepest importance, because he was certain that every one in India, whether European or Native, must take the deepest interest in the administration of Criminal Justice, as upon it depended the safety of life and property. In consequence of the extraordinary statements made before the Indigo Commission by a Member of the Bengal Civil Service, having reference to the administration of the Criminal law in the Supreme Court of Calcutta, he (Sir Mordaunt Wells) felt it was his imperative duty as one of the Judges of that Court to call the attention of the Council, and more especially of the Executive Government, to some of the statements made by the Honorable Ashley Eden before that Commission. He (Sir Mordaunt Wells) wished it to be distinctly understood, that it was not his intention, in the remotest degree, to touch upon the grave and important question lately under the consideration of the Indigo Commission. He would endeavor scrupulously to confine his observations to such portions of Mr. Eden's evidence as related exclusively to the administration of the Criminal law in the Supreme Court. He could not allow this opportunity to pass, without stating that, having been present on two occasions and read all the evidence, he wished to express his opinion that the strict impartiality and great

ability evinced throughout the enquiry by the President of the Indigo Commission was beyond all praise. He believed also that the three Gentlemen who were elected to represent different interests in the Commission had displayed great diligence. A fifth Gentleman who took part in the enquiry was his friend, Mr. Temple, and the patience, and skill with which that Gentleman had endeavored to elicit the truth was entitled to the highest commendation. He made this observation as he felt assured that the proceedings of a Commission so constituted would have due and proper weight, and hence the necessity for correcting the errors in Mr. Eden's evidence. He had reason to believe that the report of the Indigo Commission was almost, if not quite, completed. Until therefore a decision were come to, it would be wrong to make the slightest allusion bearing on the Indigo question. But he was able to enter into the present question and steer quite clear from the Indigo question which had nothing whatever to do with certain portions of the evidence of Mr. Eden, which in his opinion related exclusively to the administration of Criminal Justice in Her Majesty's Supreme Court. Mr. Eden had a perfect right to express his opinion freely and unreservedly on any point legitimately appertaining to the question submitted to the Indigo Commission for investigation. Mr. Eden might be right, or he might be wrong, as regards the opinions he had expressed to the Commissioners—that must be determined by others hereafter. He (Sir Mordaunt Wells) felt it his imperative duty, as one of the Judges of the Supreme Court, to notice the direct and unequivocal charge made voluntarily by Mr. Eden, that the Criminal law was administered partially in the Supreme Court. He was not here to utter one word that could be construed as in any way imputing to Mr. Eden the intention of wilfully misrepresenting circumstances to the Commissioners Mr. Eden was a perfect stranger to him (Sir Mordaunt Well), and he should observe towards him that courtesy which every Gentleman was bound to exercise in discussing the sentiments of others. On the 21st July, Mr. Eden appeared before the Indigo Commission, and after a few general observations, he launched out upon the question of Criminal Justice as administered in Her Majesty's Supreme Court at Calcutta. In question 3579, he was asked by Mr. Fergusson:—

"In such instances as you have mentioned was it not a gross dereliction of duty on the part of the Government not to prosecute the Europeans?"

Mr. Eden replied—

"There certainly was a failure of justice, which in my opinion may to a certain extent be attributed to the strong bias which the Governor and many of the Officers of Government have always displayed in this particular; this may also partly have arisen from the difficulty which exists under the present law of obtaining a conviction against Europeans, as for instance in the case in which a Planter named Dick *alias* Richard Aimes, was murdered by a European Planter, named Young, a French Planter named Pierre Aller, and some Native servants, in which the Frenchman and the Natives being amenable to the Courts of the country, were imprisoned for life, whilst Young, the European British subject, not being subject to the jurisdiction of the local Court, was tried in Her Majesty's Supreme Court in Calcutta, and was acquitted on precisely the same evidence as was brought against the foreigner and Natives, who were convicted in the District Court, the sentence being upheld by the Nizamut Adawlut."

Had Mr. Eden confined his evidence to the question of the cultivation of Indigo, he (Sir Mordaunt Wells) should have been silent. But Mr. Eden went on, and distinctly and unequivocally made the charge that justice could not be obtained at the Supreme Court in Calcutta. He (Sir Mordaunt Wells) scarcely thought that any Gentleman, however great his experience, would have ventured to have made such a sweeping charge in respect of a case which had been tried a year before he was born. He grounded his opinion on that case, and boldly asserted that there was a failure of justice in the Supreme

Court. He (Sir Mordaunt Wells) doubted not that Mr. Eden fully believed in the truth of the serious accusation he made against the Supreme Court; but whilst he (Sir Mordaunt Wells) refrained carefully from attributing to Mr. Eden motives inconsistent with that proper and correct feeling which invariably actuated Gentlemen in the discharge of their public acts, he was bound to say that he believed the statements made by Mr. Eden to be the consequence of an amount of ignorance quite inexcusable in a Gentleman holding an important office under the Government, and consequently possessing the means of obtaining correct information upon any subject he might wish to be examined upon before the Indigo Commission. He (Sir Mordaunt Wells) thought some of Mr. Eden's statements respecting the Calcutta Juries most unguarded, and conveying a most serious charge; for if the individuals who sit upon the Juries deliberately acted partially in the verdicts they returned, then undoubtedly they violated their oaths and would deserve the censure cast upon them by Mr. Eden. Now, he (Sir Mordaunt Wells) was free to admit that, unless the charge, boldly and distinctly enunciated by Mr. Eden, could be satisfactorily met, it would be the bounden duty of the Executive Government of India to take such steps as they might consider necessary to counteract so great an evil as the one the existence of which, Mr. Eden unhesitatingly asserted, did at present exist and which if true amounted to a positive denial of justice. He (Sir Mordaunt Wells) must say that he thought an examination of the report of Young's case would satisfy any reasonable and unprejudiced mind, that the verdict of the Jury was one perfectly justifiable under the circumstances, and in making that statement, he (Sir Mordaunt Wells) did not intend to express an opinion as regards the decision of the Sudder Court in upholding the verdict of the local Court on the occasion of the trial of some of the supposed accomplices of Young. All that he was contending for was that Mr. Eden was not justified in bringing a charge of partiality against the Jury, simply on the ground that the local Court and Nizamut Adawlut arrived at a different conclusion. He (Sir Mordaunt Wells) had taken the trouble of looking into the records of that remarkable trial, and he would state to the Council the particulars of it. Before doing so, however, he would read to the Council Mr. Eden's opinion as to the Grand Jury. He said:—

"It never fell to my lot to have to commit any Planter, but judging from my experience as a Justice of the Peace, in obtaining convictions against Europeans, I consider that very great practical difficulties exist. For instance, I have committed Europeans to the Supreme Court, the Bill has been thrown out by the Grand Jury under circumstances which led the Government to direct a recommittal on the same evidence."

So that, according to Mr. Eden, the Grand Jury who had taken a solemn oath to administer justice, had thrown out Bills against Europeans, because they had a strong bias in favor of them, and so did Mr. Eden charge all Petty Juries with being corrupt, inasmuch as they had in his opinion been influenced by party feeling in their verdicts. But to proceed with the case in question. The trial was held before two Judges, Sir Charles Grey, the Chief Justice, and Mr. Justice Ryan. He (Sir Mordaunt Wells) had obtained lists both of the Grand and Petty Juries that served on that occasion. In the Grand Jury list he found that, out of twenty-three Jurors who found a true Bill against the Planter, seventeen were merchants. Eleven of these gentlemen were directly or indirectly interested in Indigo, so that a majority of the Jury might have prevented the case from going on, and yet Mr. Eden had said that there was a feeling of partiality shown to the Europeans. As to the Petty Jury, it was composed of most intelligent men, a great majority of them being head clerks in public departments, a class of men free from all prejudices and perfectly unconnected with mercantile interests, and one of them being employed in the office of Messrs. Gilmore and McKilligin, two of the gentlemen who

had found a true Bill. Now what interest could these gentlemen have had to find a verdict contrary to their consciences? The Chief Justice, Sir Charles Grey, commenced his charge by stating—

"that the Jury would have to determine between conflicting and contradictory evidence, when the one set of witnesses or the other must be perjured."

It appeared from the report that the only direct evidence of the death of the man supposed to have been murdered was the finding of some hair, alleged to be the hair of Richard Aimes. The Chief Justice told the jury,

"that with reference to the hair, he was far from thinking that it had been proved to be even of the same color as that of Aimes. A horse had been previously dug up, and it was for them to say whether or not it was *human* hair. It had been spoken to by two women and the barber with certainty, and he must say *with too much certainty.*"

The Jury retired to consider their verdict, and, after an absence of fifteen hours, pronounced a verdict of not guilty. In the face of all this, Mr. Eden stated that there was a failure of justice in the Supreme Court, and that he placed more reliance in the decision of the Sudder Court. He (Sir Mordaunt Wells) desired to make no attack on the Sudder Court, but he would only remark that Mr. Eden had declared his preference to the decision of a Court which decided on paper. When a case was sent up to the Sudder Court, the Judges recorded their opinion and confirmed a sentence of death, by simply reading over the paper depositions, so that the Judges decided cases of life and death on paper. He certainly admired their moral courage, but for his part, he would rather forego the highest salary than consent to decide questions of fact in that way. But Mr. Eden was quite satisfied with that decision and took that to be conclusive evidence, that the Judges of the Supreme Court and the Jury were wrong. But this was not all, though Sir Charles Grey had summed up the evidence favorably, the Jury had been locked up for fifteen consecutive hours—those men who were charged with having been actuated by feelings inconsistent with their oaths. Now he did not for a moment question the decision of the Sudder Court. No doubt, the Judges had discharged their duties conscientiously and had arrived at what they believed to be a correct conclusion. Nor would he impute a wrong motive to the Magistrate who committed the prisoners, nor would he take upon himself to question the decision of any of the Officers of Government. But he would ask why should Mr. Eden do so, resting his assertion on such a case which occurred thirty years ago. The administration of justice even under the most favorable circumstances was a very difficult task, and the man who would impute a wrong motive to any judicial body administering justice to the best of their ability, was not in his opinion qualified to hold a judicial office. In his (Sir Mordaunt Well's) judgment Mr. Eden had hit upon a most unlucky case for his purpose in which he had completely failed. In question 3580, he was asked—

"Then you consider that in that case justice was obtained in the Mofussil Courts and denied in the Supreme Court?"

He answered:—

"I consider that the Judges of the Court of Nizamut Adawlut are fully as competent to come to a decision on the evidence before them, as a Calcutta Petty Jury. I shall therefore consider that in this instance a failure of justice occurred in the Supreme Court."

It was impossible not to be struck with the sneering tone which pervaded Mr. Eden's answer to this question. Here was a gentleman stating with an unerring certainty that there was a failure of justice. "Moreover," said Mr. Eden, further on,

"If the murder was not committed, where is Dick *alias* Richard Aimes, who has never appeared since?"

It never struck Mr. Eden's mind that it was a common thing even in England for two English Juries to

arrive at different conclusions even on the same evidence. "No," said Mr. Eden, "such could not be the case." The Supreme Court was wrong and the Sudder right. It was well known that in England Juries very often took different views of a case. Was it proper, therefore, to say that one of them was corrupt? He (Sir Mordaunt Wells) desired to speak of the Sudder Court with the greatest respect, for he had sought advice from that Court, and had received from them the greatest courtesy and civility. But then the question was put to Mr. Eden—

"But as a Magistrate and Justice of the Peace, would you not commit an offender, if you believed him guilty on the evidence, irrespectively as to your opinion as to what might be the view taken by a Calcutta Petty Jury or Grand Jury."

He replied—

"As a Judicial Officer, if the evidence was very clear in any case before me, I should commit; but as an Executive Officer, I should hesitate to take up many cases against Europeans, which under the circumstances I should consider incumbent on me to proceed with."

He then went on to say—

"Of the evidence against the parties particularly in the cases you have mentioned, I am not prepared to speak without a reference to the cases, but the exemption to which you allude was probably explained in my previous answer, in which I noticed the great bias which has always existed in favor of Planters from the very beginning."

Then the question was asked :—

"Then do you consider that the Government officials have sacrificed justice to favor the Planters?"

Mark the reply—

"I consider that it has frequently been the case, and I have stated so in my official reports. I confess I have favored my own countrymen in several instances."

What a statement for a gentleman to make. A gentleman coming out for the Civil Service might lack judicial knowledge and experience, but he certainly did not lack honor and moral principle. Mr. Eden commenced by charging the Government and its officers with sacrificing justice to favor the Planters, and by making the broad admission that he had himself so favored them, he supposed that that would throw greater weight on the truth of his statement. Having done so, Mr. Eden thought he could go on and make this nice attack—

"I think if the Courts are good enough for natives, they are good enough for Europeans; if they are not good enough for natives, they are not fit to have any jurisdiction at all over any one."

Very logical indeed, as some persons might consider. Mr. Eden then went on to make the following wholesale attack upon the Supreme Court—

"As far as I am myself concerned, I would sooner be tried, if innocent, in the local Sessions Court with an appeal to the Nizamut, than in the Supreme Court. If guilty, I would prefer the Supreme Court and a Calcutta Jury."

Could any thing more insulting be said of the Court to which he (Sir Mordaunt Wells) had the honor to belong? Whatever Mr. Eden's opinion might be of a Calcutta Jury, he (Sir Mordaunt Wells) entertained a very high opinion of them as a body of men assisting the Judges of the Supreme Court in the administration of justice. Was this statement to be made use of here and elsewhere and permitted to go uncontradicted?

The doctrine set forth in the introductory part of the answer was altogether fallacious, and a speech delivered by his (Sir Mordaunt Wells') learned predecessor, Sir Arthur Buller, in the course of a former debate in the Council, contained a passage which had a direct bearing on the subject, and which he would read to the Council. It was as follows :—

"Would the evil be in any way the less to the Native, if it were felt also by the European? If it were an evil, which was susceptible of being increased or diminished according to the surface over which it was spread, then he could imagine some reason in the argument. But if we found a certain number of persons subject to an imperfect system, which we

admitted must be remedied, and which we vowed our intention of remedying as soon as possible, and if we found at the same time certain others who, by no force or fraud of theirs, but by our own deliberate acts, and the acts of the Imperial Legislature, had been specially exempted from it, and were painfully alive to its imperfections—upon what principle would we compel the latter to become follow-sufferers with the former? Certainly, not on the principle of the greatest happiness of the greatest number. Certainly, not on the principle of doing equal justice to all. He could imagine our doing so on no other principle than that of doing equal injustice.

No one could object to any thing in the shape of legislative favoritism more strongly than he did—no one more strongly than he did, to exclusive privileges, which worked real injustice, or excited abiding discontent. No one could subscribe more readily or more loyally to the doctrine of equal laws for all. But then, while holding these principles steadily in view, he could not shut his eyes to the actual state of things around him. He was not there a philosopher, to propound a perfect theory, or to enunciate metaphysical truths. He was simply a legislator dealing with men and things as he found them—dealing with a state of society full of anomalies, and having to carry out a great change in the manner least obnoxious to the different interests which must be affected by it. Well! What did he find? He found, on the one hand, a small but highly civilized community, long accustomed to good laws and to a good administration of them. He found, on the other hand, vast masses but lately emancipated from barbarism, and inspired with no traditionary reverence for equal laws or incorruptible justice. The former contrasted the Mofussil Courts with those by which they were now protected, and they deprecated a change with horror. The masses found in these Courts a safeguard far better than any that their forefathers ever enjoyed or dreamed of, and they accepted them with perfect content.

It was impossible to add anything to this truly eloquent declaration. But it was necessary to examine the ground for the assertion in the latter part of the answer, and he would now state to the Council, from documents examined by himself, and also from his own personal knowledge of the working of the Criminal law in the Supreme Court, that Mr. Eden's attack upon the Supreme Court was altogether groundless. He had presided over six Sessions, and he had just concluded the seventh. The great trial which took place a few Sessions ago, and which was presided over by the Chief Justice and Mr. Justice Jackson, afforded the best illustration as to whether justice was sacrificed to favor Europeans or not, and it was the most complete contradiction to the assertion made by Mr. Eden. In that case an Englishman was charged with a native of rank, and though a great deal had been urged on the Jury as to the former high position and respectability of the European prisoner they found him guilty, and the same activity that was displayed by the authorities in arresting and bringing down the native, was also displayed in apprehending the European. During his term of office, he had tried between sixty and seventy Europeans. He had an official return which showed that of the seventy-one cases in which he had read the depositions, only six had been thrown out by the Grand Jury; the Petty Jury had convicted in fifty-two, verdicts of not guilty were entered against ten, and three pleaded guilty. The first case he would mention was a a remarkable one, as showing the strictest impartiality on the part of the Jury. A European of the name of Henry Watson had, in a violent passion, struck a fellow native servant with a *lattee* or stick, and no sooner he did so, than the man was found in the arms of the European, the latter attending on him with the utmost solicitude. The Jury, by his direction, found him guilty of murder, and he had the painful duty cast upon him to sentence the prisoner to death. But he (Sir Mordaunt Wells) knew well that it was a very proper case which called for a mitigation of sentence, and he accordingly called on the Lieutenant-Governor, who took the deepest interest in the case, and having fully satisfied himself as to the circumstances, commuted the sentence to one of penal servitude. Could it be said that the Jury had acted partially in this case? The next case was that of a soldier, who was tried for shooting a native under the most peculiar circumstances. The man had accompanied the soldier to a place some four or five miles from the place where he was encamped. Midway between that place and the camp, was found the dead body of the native with a shot-wound through the leg. The soldier having

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arrived without the man, was afterwards suspected and arrested. There was an utter absence of all motive for the commission of the crime, and the defence of the prisoner was that he suspected the native was leading him astray to entrap him, and as that occurred in an unsettled District, he suspected some foul play and in a hasty moment shot him. He (Sir Mordaunt Wells) stated his view of the law, as bearing on the facts proved in the case, and the prisoner was found guilty. Was there any failure of justice in this case? Then again there were three European Soldiers who were tried for robbing a Native in Calcutta, and in spite of the appeal that was made in their behalf the Jury again convicted. Again, he would ask was there a failure of justice in this case? It mattered to him very little what Mr. Eden's opinions were, but all he wished was that there should be a most emphatic denial of his charge against the Juries in the Supreme Court. There was another case, and it was one which occurred under the most distressing circumstances, and although it was proved that the murdered man was diseased and would not have survived more than a few weeks, even if he had not received the blow, still he (Sir Mordaunt Wells) stated to the Jury that if the act of the prisoner accelerated the death of the deceased even by a single minute, still it would be the duty of the Grand Jury to find a Bill and they did so.

He would not trouble the Council with any more details, but content himself with saying that he did not believe that in a single case had there been a failure of Justice.

He was certain that the native population, instead of sympathising with Mr. Eden, reposed great confidence in the criminal administration of Justice in Her Majesty's Supreme Court. He had tried between 200 and 250 native cases, and read the depositions in all. Of these the Grand Jury threw out twenty-five, and there were sixty-nine verdicts of not guilty by the Petty Jury, so that comparing the number of natives acquitted with the number found guilty, the percentage was in favor of the natives. [Sir Mordaunt Wells here described the practice of the Judges of the Supreme Court in reading over the depositions two or three times so as to make themselves acquainted with the cases they had to try.] He could state most emphatically that during his term of office not a single prisoner had been improperly acquitted.

The prosperity and greatness of the Queen's Indian Empire would depend upon the bringing about a system of judicature that would secure to all Natives and Europeans security for life and property. He believed, and in saying what he was about to state, he did not speak authoritatively, but judging of the public acts of the Governor-General, he (Sir Mordaunt Wells) believed that His Excellency entertained sound views on this all-important question. He believed that his Honorable friend (Sir Bartle Frere) was anxious to carry out such changes as might lead to a better and sound administration of justice. An ominous silence seemed to him to prevail at present with respect to the question of subjecting Europeans to the Mofussil Courts. Now that the Criminal Procedure Code and the Penal Code were about to be passed, he was most anxious that Mr. Eden's statements should not go home uncontradicted and unexplained, to be used by certain individuals for the purpose of inducing Parliament to pass an Act, the effect of which would be at once to subject Europeans to the Mofussil Courts. As for himself (Sir Mordaunt Wells), he was willing to assist in any manner that might be considered useful in extending the principle of the English law throughout Bengal, and he believed the Natives would greatly esteem a system of judicature that would afford ample security for life and property. He believed that the first step to be taken in bringing about a radical reform of the Courts would be to separate the administrative from the judicial system, and, as far as practicable, procure the services of trained lawyers, uproot the appeal system, and aim at a firm and speedy administration of justice.

He had intended concluding with a motion on the subject of local Courts, but he believed the question would shortly come before the Council. In conclusion, he begged to express his warm thanks to the Council for their courtesy and kindness in permitting him to make this explanation on a subject he was personally and deeply interested in as one of the Judges of the Supreme Court.

SIR BARTLE FRERE said that he never addressed the Council with greater reluctance than on the present occasion, and as his Honorable and learned friend had concluded his speech without making any motion, he (Sir Bartle Frere) would willingly have abstained from any further remarks but for the very pointed appeal which had been made to him both personally and as a Member of Government. He deeply regretted that his Honorable and learned friend had not left the task he had undertaken to the Chief Justice of the Supreme Court (Sir Barnes Peacock) who had ever shown himself so ready and so able to defend the honor of the Court when he thought it necessary. He (Sir Bartle Frere) still further regretted that his Honorable and learned friend had not waited until the Indigo Commission submitted their report. The learned Judge had paid a well deserved tribute of praise to that body, and had justly remarked on the conscientious spirit in which they had performed their difficult task. Looking to the mode in which that Commission had been appointed, and to the manner in which they had discharged their duties he (Sir Bartle Frere) could not but think it would have been the better and more dignified course if the learned Judge had waited for the report of the Commission and had seen how it dealt with the evidence on which he had commented.

The whole of that evidence was given on oath, and, as evidence on oath deserved, he (Sir Bartle Frere) thought, to be treated in a spirit very different from that evinced by the Honorable and learned Judge. Witnesses of the most widely discordant views had been sought out and examined by the Commission, and pressed to state their opinions on the questions before them. It struck him (Sir Bartle Frere) as a proceeding which was neither necessary nor desirable, that a Member of that Council which had so formally appointed the Commission should get up and select for comment, in the terms used by the learned Judge, one portion of the evidence of one witness, before the Commission before they knew the view which the Commission itself was disposed to take of the evidence.

He (Sir Bartle Frere) had attentively read the whole of Mr. Eden's evidence, with a view to discover the points to which the Honorable and learned Judge had taken exception; and so far from its appearing to him (Sir Bartle Frere) in the light described by his learned friend, the evidence struck him as that of a diligent and careful observer, who had taken great pains to collect facts as the groundwork of his opinions, and who expressed those opinions with a manly frankness and impartiality, which, whatever one might think of the opinions themselves, ought to have secured him against such attacks as those of his learned friend It was true the evidence was not very complimentary to any class of tribunals or to any part of the administration. The witness had with impartial freedom found fault with almost every branch of the Government Service, and even with the Government itself, on whose proceedings he had commented in no measured terms—but so far from thinking this a ground for blaming him, he (Sir Bartle Frere) considered the witness entitled to every credit for his courage and candour, whatever one might think of his opinions, and looking to the strong sense of duty which could alone induce a man to come forward and incur the odium of passing such sweeping censure on so many branches of the public service, he (Sir Bartle Frere) felt that the witness deserved honor for his courage rather than such treatment as his evidence had received from the Honorable Judge.

It was not his (Sir Bartle Frere's) purpose to follow his Honorable and learned friend through all the detailed

remarks he had made on the evidence—or through the history of the various cases which the learned Judge had described with such minuteness, but he (Sir Bartle Frere) must protest against the inference drawn by the learned Judge that the evidence showed anything approaching what the learned Judge had stigmatized "as a deliberate intention of attacking the administration of justice." As an instance of the unfair inferences which the learned Judge had drawn, he (Sir Bartle Frere) would only refer to what had fallen from him regarding the case of Dick Aimes. His Honorable and learned friend had dwelt at great length on this case having occurred before Mr. Eden was born. Now, he (Sir Bartle Frere) considered that the fair inference from this circumstance was that Mr. Eden purposely took a case so far removed from the present time, as to obviate all chance of exciting personal feeling. This at least was as obvious an inference as that which the learned Judge had drawn.

Again, the learned Judge had at great length argued that Mr. Eden's evidence was a grave attack on the "Jurymen of Calcutta." He (Sir Bartle Frere) could discover no ground for this assertion. The learned Judge had stated that Mr. Eden charges the Grand Jury "with throwing out bills contrary to evidence." A moment's consideration would have shown his Honorable and learned friend that Mr. Eden could not possibly mean any thing of the kind, for the simple reason that nobody but the Grand Jurymen themselves could possibly tell what evidence was laid before them. The main objection urged to Grand Juries is that they sit with closed doors, and that nobody can even tell exactly what is the evidence on which they find or ignore bills. Again the Honorable and learned Judge stated that Mr. Eden had asserted in his evidence that the Petty Jury "perjured themselves, and were corrupt."

SIR MORDAUNT WELLS explained that what he meant to say was that the charge was one of partiality. Perjury did not apply to a case of that kind.

SIR BARTLE FRERE continued. He was very glad he had misunderstood or rather misheard his Honorable and learned friend, for he had noted down at the time the words as he had heard them. He (Sir Bartle Frere) could discover in Mr. Eden's evidence nothing which even by implication amounted to an assertion that the Petty Jury ever gave verdicts inconsistent with their oaths. Mr. Eden's opinions were directed, simply to the comparative merits of two different methods of administering justice. Now on this point he (Sir Bartle Frere) would only remind his Honorable and learned friend that there is no single institution of which Englishmen are most justly and generally proud, with which they do not frequently find fault, without any one thinking the worse either of the institution attacked or of the person who found fault with it. At one time or another, everything from Magna Charta to the Bill of Rights and the Reform Bill, Liberty of the Press, Trial by Jury, and the Habeas Corpus Act are all freely canvassed and found fault with. In the Honorable and learned Judge's own profession there was, and always had been, a vigorous controversy between the advocates of Courts of Equity and those of Law. Did any one blame Lord Brougham or Lord Campbell for all the hard things they had said in their life time regarding that particular division of jurisprudence to which they had not been originally trained? or did those opinions prevent such men from being considered ornaments to the Bench of that Court whose mode of proceeding they had in earlier days attacked without mercy?

The Honorable and learned Judge had allowed himself to be carried away into an attack on the Sudder Court, and he had made assertions regarding the practice of that Court, which he (Sir Bartle Frere) believed to be incorrect, and which he felt sure his Honorable and learned friend would be glad to have an opportunity to explain. He had stated that the Sudder Court decided questions of life and death on paper evidence. Now he (Sir Bartle Frere) believed

that this statement was incorrect in point of fact. The verdict was passed and the sentence pronounced by the lower Court.

(SIR MORDAUNT WELLS, the VICE-PRESIDENT, and MR. HARINGTON here severally corrected this statement by pointing out that the final sentence was pronounced by the Sudder.

MR. FORBES remarked that Sir Bartle Frere's statement was correct as regarded Madras).

SIR BARTLE FRERE continued. He was obliged to his Honorable friends for correcting him as regarded Bengal, where he had supposed that the practice was the same as in Madras and Bombay, but even as regarded Bengal, he felt sure Sir Mordaunt Wells would, on consideration, see the injustice of his remarks, implying that the Sudder Court in pronouncing sentence on the record of a conviction arrived at by the lower Court was acting in a manner inconsistent with the duty of a conscientious Judge.

Into the learned Judge's detailed examination of the several replies of Mr. Eden to the questions in pages 3 to 7 of his evidence, he (Sir Bartle Frere) would not enter. He could only say that he could find no foundation for the assertion of the Honorable and learned Judge, that Mr. Eden attributed the unavoidable "uncertainty of the tribunal" to "wrong motives." He (Sir Bartle Frere) could discover no solitary phrase imputing motives of any kind.

So, again, with regard to the "sneer" on which his Honorable and learned friend had dwelt so much, so far from the evidence being given in a sneering spirit, it appeared to him (Sir Bartle Frere) to be given with all the seriousness befitting the occasion. Again, the Honorable and learned Judge had dwelt with great bitterness on Mr. Eden's admission, where he says "as a young Assistant I confess I have "favored my own countrymen in "several instances," and had drawn from it a most unfair inference, as though it were Mr. Eden's habit to act contrary to his duty as a Magistrate, and to feel no shame in the admission. He (Sir Bartle Frere) could not but think that more consideration was due to such admissions made by a man situated as Mr. Eden was, who could have no possible motive for making them save a desire to point out defects in our administration and to get them remodied.

As for the admission itself, he (Sir Bartle Frere) could only say, that if, in looking back at his earlier days when passion even for doing justice was stronger than experience and judgment, his Honorable and learned friend could now in maturer years find nothing whatever to regret, he (Sir Bartle Frere) sincerely envied him.

The Honorable and learned Judge had justified the course he had taken by his jealous regard for the honor and character of the Court to which he belonged; but he (Sir Bartle Frere) could not allow him to monopolize the right to value, and if need be, to defend the Supreme Court. It was an institution of which all Englishmen in India were justly proud, and which we are all prepared to defend from any real attack. Indeed the fairer inference from Mr. Eden's evidence would have been that we wanted more Supreme Courts, that we ought to have them in every large Town—and this brought him to the part of Sir Mordaunt Wells' remarks, in which he commented with such severity on Mr. Eden's answer to the 3606th question. His Honorable and learned friend seemed to think that there was some secret conspiracy to do away with the Supreme Court, and that certain unnamed parties in England were joined with parties he did not name in this country to get rid of the institution, and he connected with this design in some mysterious way the Criminal Code on which the Council was now engaged, and the Code of Criminal Procedure which was afterwards to occupy their attention, and His Honorable and learned friend had justified his taking up Mr. Eden's evidence on the ground that it was necessary to rouse public attention to the matter, because there was "an ominous silence about the subjection of Europeans to the Mofussil Courts."

As for any "ominous silence", he (Sir Bartle Frere) must say he was not aware of its existence. He did not think they were in any danger of being allowed to forget the subject, and as the Honorable and learned Judge did not appear to stand alone in his misapprehension on the subject of the probable effects of the Penal Code and of the Code of Criminal Procedure becoming law, he would trouble the Council with a very few remarks on the subject. He (Sir Bartle Frere) wished he could have appropriated to himself the compliment which the Honorable and learned Judge had paid him, in saying that he believed he (Sir Bartle Frere) entertained very sound views on the subject. But he (Sir Bartle Frere) could lay claim to no views which were not, he believed, shared by all Members of the Government here and in England. Now when the Honorable and learned Judge spoke of certain parties in England as engaged in their design against the rights of British subjects, and spoke of the "sinister views" of such parties, who were the persons who were likely to be implicated? Macaulay, alas! was dead—but among those who had lately taken the most prominent part in the reform of our Indian Judicial administration, which had given such alarm to the Honorable and learned Judge, were men like Mr. Hay Cameron, Sir Edward Ryan, Mr Robert Lowe, two Vice-Chancellors, and a Master of the Rolls, omitting many names of Indian legal authorities of the highest eminence, who having been connected with the Company's Courts might be less satisfactory to the Honorable and learned Judge; besides these there were the leading Statesmen of all parties in Parliament, without whose general consent no such alteration of the law could be carried. Did his Honorable and learned friend really suppose that such men as he had named had really entered into a conspiracy against the rights of Englishmen in India? He (Sir Mordaunt Wells) had done no more than justice when he stated that the present Government of India in this country was sincerely anxious for sound judicial reform, and he (Sir Bartle Frere) hoped that their views were, as the learned Judge had stated, thoroughly sound. But he would put it to his Honorable and learned friend whether he was likely to further the cause of such reform by giving his authority to groundless suspicions as to the object and tendency of that portion of the good work on which the Council were now engaged?

He begged his Honorable and learned friend would consider what were the essentials of the excellence of that description of judicial administration which he in common with other Englishmen in India so much noticed in the Supreme Court? First, there was a trained and independent bench of the highest character for learning and integrity. Then there was a Bar, also trained and independent and second in ability to no Bar out of England. Then there was a body of attornies of the highest professional character. A well paid and ample establishment of interpreters and all other officers of the Court, and such an amount of work as admitted of all the safe-guards which we most value in the administration of justice—entire publicity—*vivâ voce* evidence—the parties and witnesses face to face and in open Court.

Let his Honorable and learned friend consider how many of these conditions of excellence were within the power of Government to bestow, and how many of them were either altogether beyond the power of Government or at any rate out of its reach at present, owing to financial pressure. Let him reflect that the Government and that Council were now and had been for some time past engaged in supplying the present defects in the Judicial Administration as far as was in their power, and he left it to his Honorable and learned friend to decide, whether it was not better for the interests of justice to support the Government and that Council in the efforts they were making, rather than to throw unfounded suspicion on their motives, and thus lend the weight of his authority to an agitation which would delay or prevent any result to the labors of all the Indian Judicial Reformers

who had for years past been working in that field of usefulness.

THE VICE-PRESIDENT said, it was not his intention to prolong this discussion. He was much indebted to his Honorable and learned friend for having brought the matter to the notice of the Council. He thought that, whatever Mr. Eden's opinion as to the administration of justice in the Supreme Court might be, if the Judges entertained a different opinion from Mr. Eden, they were perfectly justified in expressing it. As he (the Vice-President) understood his Honorable and learned friend, he had not denied Mr. Eden the privilege of entertaining or expressing his own opinions as to the administration of justice in the Supreme Court. What his Honorable and learned friend had endeavored to show was that the Judges should not by their silence be supposed to have given their assent to Mr. Eden's statements. It was said that Mr. Eden had made those statements on oath. Be that however as it might, the question was, were or were not Mr. Eden's opinions well founded, and upon such a question, his Honorable and learned friend was perfectly justified in coming forward and stating the experience which he had had in the administration of criminal justice in this city? His Honorable and learned friend had had far more experience in that respect than he (the Vice-President) had. He (the Vice-President) had presided in only one Criminal Sessions and had taken part in another. Mr. Eden had found fault with the Calcutta Juries. But he (the Vice-President) could say from what he had seen that the Juries here were, in his opinion, quite as good as many of the Juries in England. There was not a single case at the Sessions at which he presided, in which they had returned a verdict, in which he (the Vice-President) did not concur. He believed that they acted most fairly and most justly in every case, and did their duty to the best of their ability. He (the Vice-President) had not had so much personal experience as his Honorable and learned friend, as to whether any feeling of partiality had been shown by the Jury towards Europeans. In the case which he had tried, and which was alluded to by his Honorable and learned friend, that of Sibkissen Banerjee, who, together with a European, Dr. Crawford, was tried for uttering a forged will, the Jury did not exhibit the slightest feeling of partiality for the European—they did not find one guilty and the other not guilty. But they found both guilty, and while the native was sentenced to transportation for fourteen years, the European was sentenced to penal servitude for an equivalent period according to the scale laid down by the law of the land, so that both were tried and convicted together, and were sentenced to an equal amount of punishment. In other cases which he had tried against Europeans no feeling of partiality was shown.

Mr. Eden was asked in question 3575—

"Can you point to any particular records, printed or other, in support of your assertion regarding acts of violence?"

He said—

"I beg to hand in an abstract of forty-nine serious cases of murders, homicide, ryot, arson, dacoity, plunder, and kidnapping, which have occurred from the year 1836 to 1859, some of which I have taken from records which came before me during my incumbency, others from printed Nizamut Reports, and all from authenticated papers."

He was then asked—

"Could you state how many of these cases came under your personal knowledge as Magistrate?"

"I only remember two cases," answered Mr. Eden. So that of the forty-nine cases specified in the list given in by him, in which Europeans had not been brought to justice, only two had come under his personal observation. Mr. Eden was then asked by Mr. Fergusson—

"In the forty-nine cases which you ferreted out, as having occurred during the last 30 years, is it not the case that, in more than half of them, Europeans have not been

accused, or, if accused, have been acquitted?"

He answered—

"There are scarcely any one of these cases in which the European or principal manager of the concern has ever been put upon his trial, although in many of them the Judges trying the cases have expressed strong opinions that such Europeans were themselves implicated in them; and it is to this impunity and freedom from responsibility that I attribute the constant recurrence of these violent outrages."

Then he was asked—

"In such instances as you have mentioned, was it not a gross dereliction of duty on the part of the Government not to prosecute the Europeans?"

And then one of the reasons which he gave was the difficulty which existed under the present law of obtaining a conviction against Europeans in the Supreme Court. He did not speak of the expense or inconvenience of sending down Europeans from a distance, but he expressed his opinion that it was difficult to obtain a conviction against them. Now that was the assertion which his Honorable and learned friend had endeavored on behalf of the Supreme Court to contradict. His Honorable and learned friend had had experience of Criminal trials in the Supreme Court, and came forward and said that, in the cases in which he was concerned, he saw no partiality. He would read the question and answer together. The question was—

"In such instances as you have mentioned was it not a gross dereliction of duty on the part of the Government not to prosecute the Europeans?"

Mr. Eden replied—

"There was certainly a failure of justice which in my opinion may to a certain extent be attributed to the strong bias which the Governor and many of the Officers of Government have always displayed in favor of those engaged in this particular cultivation."

In the first place Mr. Eden attacked the Government and the Officers of Government, and he then went on to say—

"This may also partly have arisen from the difficulty which exists unde the present law of obtaining a conviction against Europeans, as for instance in the case of a planter named Dick *alias* Richard Aimes, who was murdered by an European planter named Young a French planter named Pierre Aller, and some native servants, in which the Frenchman and the natives, being amenable to the Courts of the country, were imprisoned for life, whilst Young, the European British subject, not being subject to the jurisdiction of the local Court, was tried in Her Majesty's Supreme Court in Calcutta, and was acquitted on precisely the same evidence as was brought against the foreigner and natives who were convicted in the District Court; the sentence being upheld by the Nizamut Adawlut."

Now Mr. Eden did not state simply that the planter was charged with the murder of Dick, but he asserted that the man was actually murdered, and that the Englishman was acquitted. Now what would that lead to, if it went home uncontradicted? His Honorable and learned friend had referred to the case, and had found that it was a case which was tried by Sir Charles Grey and Mr. Justice Ryan. If what had been stated by Mr. Eden were true, those two eminent Judges must have been blameable. But his Honorable and learned friend had shown that there was a question at the trial as to whether the man was dead at all. He might or might not have been dead; at any rate there was not in the opinion of the Chief Justice sufficient evidence of the fact. The mere fact however of the man not being there was conclusive proof in Mr. Eden's mind of his death. It might have been that the Court and Jury were wrong in point of fact. But the question was, whether they ought to have found the man guilty of murder upon the evidence then before them? It appeared however that the other parties who were tried in the District Court, were sentenced to imprisonment for life, and that this sentence was upheld by the Nizamut Adawlut. He (the Vice-President) would only observe that, if a man was found guilty of murder, he ought to be sentenced to be hanged, unless there were any mitigating circumstances to induce the Court to commute the sentence to transportation for life. If the evidence left any

doubt on their minds as to the guilt of the prisoner, they were bound by the law, which they were sworn to administer, to give the benefit of it to the prisoner. There was, as he had said, in that case an entire absence of proof as to the death of the man, and the only evidence produced was some human hair as was supposed, but which, as we had heard from the Honorable and learned Judge, turned out to be that of a chesnut horse.

Mr. Eden was then asked—

"Then you consider that in that case justice was obtained in the Mofussil Courts and denied in the Supreme Court?"

He replied—

"I consider that the Judges of the Court of the Nizamut Adawlut are fully as competent to come to a decision on the evidence before them, as a Calcutta Petty Jury."

He (the Vice-President) had had no time to look into the case, but his Honorable and learned friend had taken the trouble to do so, and had said that the only evidence which was produced to prove that the man was dead was the hair to which he (the Vice-President) had already referred. Mr. Eden might be perfectly right in saying that the Sudder Court was as fully competent as a Calcutta Jury to determine a case of murder: but he (the Vice-President) could not agree with him. He (the Vice-President) thought that there was great difference between Judges deciding cases on paper and a Jury trying a case with the facts before them. Mr. Eden might have meant that the Mofussil Judge who tried the case had the same opportunity of arriving at the truth as a Calcutta Jury, but he distinctly mentioned the Sudder Court. Now he (the Vice-President) did not think that Judges who merely decided on paper were as competent as a Jury who had the evidence before them. The Sudder must act on the judgment formed by the Sessions Judge. He (the Vice-President) did not mean to say that if a Sessions Judge found a man guilty of murder on insufficient evidence, the Sudder Court would not overrule him, but still they must to a great extent rely on the judgment of the Sessions Judge. Mr. Eden then went on to say—

"I therefore consider that in this instance a failure of justice occurred in the Supreme Court."

Mr. Eden might be right or he might be wrong in supposing that the murder was committed in that particular case; but he (the Vice-President) thought he gave a very bad reason for his opinion. But then said Mr. Fergusson to him—

"If I tell you that I was in the Supreme Court during the whole of that trial, and with a strong feeling against the prisoner, and that I and most other gentlemen in Calcutta considered it impossible to find him guilty on the evidence, would it alter your opinion in any manner?"

"No," said Mr. Eden, "as, with those facts before them, and commenting on those facts, the Sudder Court subsequently convicted the remainder of that party as accessories to the murder on that evidence."

Now he (the Vice-President) would not say that there was a failure of justice in the Sudder Court because the Supreme Court had come to a different conclusion. But was it only in cases where a conviction followed that justice was done? Mr Eden's reasoning was nothing more than this, that because the Sudder Court had convicted the accessories to the murder, the Supreme Court could have no excuse for acquitting the principal. Mr. Eden appeared not to have looked into the evidence himself but founded his opinion upon the judgment of the Sudder Court. Besides what proof did he adduce that the evidence was identically the same in both cases. The Honorable and learned Judge had told us that the case was tried by two Judges, so that the Judges and the Jury were all wrong, because the Sudder Court happened to convict the supposed accomplices of the murder, Now let us examine Mr. Eden's logic. Mr. Eden went on to say—

"Moreover if the murder was not committed, where is Dick *alias* Richard Aimes, who has never appeared since."

The Vice-President

But the question was not, where was Dick; his disappearance was not conclusive evidence of the murder. Did Mr. Eden really think that, because Dick had not appeared for the last 30 years, the Supreme Court ought to have convicted the prisoner? Mr. Eden might and, as he (the Vice-President) thought, did entertain that opinion, but it did not follow that, because he entertained that opinion, the Judges and the Jury were wrong. The question was not whether Dick was dead or alive—but whether there was a failure of justice because the prisoner was acquitted upon the evidence then before the Court. But, said Mr. Eden, if innocent, he should not like to be tried by the Supreme Court. That was an attack on the Court just the other way, for if it meant any thing at all, it meant this, that, if innocent, he could not expect to be acquitted. Now, be it remembered, this was all upon oath. He (the Vice-President) would read Mr. Eden's own words on this point. He was asked by Mr. Fergusson—

"In the present state of the Mofussil Courts, and with the present Judges who preside in them, would you like to see any European friend tried in them?"

Mr. Eden answered—

"I think that, if the Courts are good enough for the Natives, they are good enough for Europeans. If they are not good enough for Natives, they are not fit to have any jurisdiction at all over any one. As far as I am myself concerned, I would sooner be tried if innocent in the local Sessions Court, with an appeal to the Nizamut, than in the Supreme Court. If guilty, I would prefer the Supreme Court and a Calcutta Jury."

So that if Mr. Eden were guilty, he would not be afraid to be tried by the Supreme Court, for he was certain to be acquitted; but then he failed to explain why he, being a European whom a Jury would acquit even if he were guilty, was afraid of being convicted if he were innocent. Now he (the Vice-President) had no wish to express any opinion with regard to Mr. Eden's evidence, but he thought that his Honorable and learned friend was quite right, when he saw such an attack, to look into all the cases, to bring his experience to bear upon the matter, and to deny that the Court, of which he was one of the Judges, was open to the attack which had been made against it, lest it should be supposed that the Judges by their silence acquiesced in Mr. Eden's statements. Mr. Eden was quite at liberty to entertain any opinions he pleased and he might express them, but the Judges were also entitled to express theirs.

He (the Vice-President) could only repeat that, as far as his experience of the Calcutta Juries went, they were quite as good as any in England. As regarded the Grand Jury, he thought it was rather hard to blame them, for they simply determined whether there was a sufficient case to warrant their sending the case before a Petty Jury. In the case of Dick, the Grand Jury found a true Bill. He thought it was not necessary to trouble a Grand Jury when cases were committed by a Justice of the Peace or a competent Officer. But he (the Vice-President) desired to speak from the little experience that he had, not as Mr. Eden did from reports, that the Grand Jury at the Sessions held before him had not thrown out a single Bill when they ought to have found a true Bill, or *vice versâ*.

It did not follow that because the Petty Jury acquitted a prisoner, the Grand Jury were wrong. It was not his (the Vice-President's) intention to go any further into the question, but he wished to state that he fully concurred in all that had fallen from his Honorable and learned friend.

MR. SCONCE said, he desired to make only one remark with reference to what the Honorable and learned Judge near him had said upon the subject of the record of the trial of certain parties who were convicted by the Sudder Court in Dick's case. He himself knew nothing of the trial referred to, whether held in the Supreme Court or in the Sudder Court. But he understood his Honorable and learned friend to say that the record which he held in his hand was the record upon which the Sudder Court gave judgment. Now he rather apprehended

that the depositions referred to by his Honorable and learned friend were copies or translations of the preliminary information or deposition taken by the Zillah Magistrate, and transmitted by that Officer to the Clerk of the Crown. But the record of the trial laid before the Sudder Court was of a different character; that record undoubtedly would exhibit the depositions taken by the Circuit Court, and both as to the men examined and the information elicited from the witness s might considerably differ from the depositions taken by the Magistrate. He beli ved he might assure the Honorable and learned Judge that in the depositions he had read, he had not read the trial referred to the Sudder Court.

SIR MORDAUNT WELLS said, what he intended to say was that the papers in question were the deposit ons in the case referred to He was not aware and did not mean to say that the papers were the papers of the trial referred to the Sudder Court.

THE VICE-PRESIDENT said, he was sure that his Honorable and learned fr end, in referring to the depositions in question, never intended to say one word against the Sudder Court.

SIR MORDAUNT WELLS said, he had no hesitation in saying that such an intention was farthest from his mind. He must also say that, had he been examined before the Indigo Commis ion, he could not have taken upon himself to say that the Sudder Court were wrong in their deci ion in the case referred to. He would further emphatically state that, allowing that Mr. Eden had a perfect right to hold any opinions he pleased, and irrespectively of whatever views others might take of the matter, Mr. Eden had not informed himself as to the facts of the case in question.

SIR BARTLE FRERE said, he would only observe with reference to what had fallen from the Honorable and learned Vice-President, that he feared he might have been misunderstood as expressing concurrence with the views contained in Mr. Eden's evidence. It was not his intention to offer any opinion either for or against those views, many of them were matters of opinion, some almost of taste, for instance the declaration on which both his Honorable and learned friends had dwelt so long and with such emphasis, as to the Court by which he would like to be tried. For his own part, he (Sir Bartle Frere) would prefer being tried by neither, though, if forced to choose, he might have a prejudice in favor of a Judge and Jury of his own countrymen; all he had wished to insist on was that evidence given on oath before a Commission, constituted as the Indigo Commission was, ought not to be liable to be discussed as Mr. Eden's had been by his Honorable and learned friends, while no report of the Indigo Commission was yet drawn up, that the Supreme Court might have stood upon its own character without noticing the criticism contained in the evidence, and that, if the Honorable and learned Judge still thought the evidence required notice, the Legislative Council was not the place in which such notice ought to be taken.

SIR MORDAUNT WELLS said, he was not aware of any other place where he could have done so. He objected on principle to making any observations from the Bench, which were not strictly connected with his judicial business.

THE VICE-PRESIDENT said, the Indigo Commission was not appointed to pronounce any opinion regarding the Supreme Court, but simply to enquire and submit a report on the subject of Indigo cultivation. His Honorable and learned friend therefore could not have gone and volunteered his evidence before that Commission. But when he found that Mr. Eden's evidence before the Commission contained an attack upon the Supreme Court, his Honorable and learned friend was quite right in coming forward to show that the statements of that gentleman were not correct.

INCOME TAX.

SIR BARTLE FRERE moved that the Council resolve itself into a

Committee on the Bill "to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices)" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting was reported.

Sir BARTLE FRERE moved that the Bill be read a third time and passed.

The Motion was carried and the Bill read a third time.

Sir BARTLE FRERE moved that Mr. Beadon be requested to take the above Bill to the Governor-General for his assent.

Agreed to.

INDIAN FINANCES.

Sir BARTLE FRERE begged to mention that it was the intention of Government to proceed with the measures which had been introduced and left in a partially incomplete state by the Right Honorable Mr. Wilson, and to proceed with them in accordance with the views which had been stated to the Council by that gentleman. He (Sir Bartle Frere) hoped next Saturday to state the alterations which were proposed to be made in the Bill "for the licensing of Arts, Trades, and Professions" and which had had the Right Honorable Gentleman's sanction; and at some future sitting of the Council, it was proposed to proceed with the Bill "to provide for a Government Paper Currency."

INDIAN PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Bill.

A verbal amendment was made in Section 11 Chapter II.

Sections 1 to 4 of Chapter III were passed as they stood.

The CHAIRMAN moved the introduction of the following new Sections after Section 4 :—

"In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment."

"In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which such offender might have been sentenced to imprisonment."

The Sections were severally agreed to.

Section 5 was passed as it stood.

Sections 6 and 7 were passed after verbal amendments.

Section 8 provided as follows :—

"In every case in which an offence is punishable with flogging, it shall be competent to the Court to sentence such offender to flogging not exceeding thirty stripes with a rattan."

Sir MORDAUNT WELLS said, he did not approve of the punishment of flogging adults. It was inconsistent with the spirit of modern legislation, and inapplicable to a civilized country.

The CHAIRMAN said that, in many parts of India, large bodies of natives regarded imprisonment as tantamount to the punishment of death. To such persons flogging was a most merciful punishment, and he therefore thought it would be advisable to retain it.

Sir BARTLE FRERE concurred with the Honorable and learned Chairman, and said that he could speak from his own experience that flogging was a very useful punishment, particularly in several parts of the country where the people were in a state of semi-barbarism, and where they could not bear an amount of imprisonment which was absolutely trifling to men of more civilized habits. A very short period

of confinement in the best managed and most healthy jail was sufficient to kill a man who had been used all his life to roam in the *jungle* or desert You could not fine men who had no property, and the most merciful punishment was to give a flogging for all but the most serious offences or for such as required only a very short imprisonment.

MR HARINGTON also expressed himself in favor of flogging as a suitable and proper punishment f r certain offences in this country, whatever might be the state of public feeling at home.

MR. BEADON said, it had been found that corporal punishment was more effectual in deterring persons from the commission of disgraceful crime than imprisonment, while in many places, owing to the unhealthiness of the jail or the precautions rendered necessary by its insecurity, it was really more merciful to flog a man moderately than to imprison him. He was quite sure that, if the Mofussil Officers were consulted, they would unanimously declare in favor of the continuance of flogging as a punishment.

SIR MORDAUNT WELLS said, he would defer to the opinions of his Honorable friend opposite (Sir Bartle Frere) and the Honorable Member on his right (Mr. Beadon) that flogging was absolutely necessary as regards Natives. He objected, however, to flogging Europeans, and would therefore propose the addition of the following words to the Section—

"which shall not be inflicted upon any European above the age of sixteen."

The question being put, the Council divided—

Ayes 3.	*Noes* 4.
Sir Mordaunt Wells.	Mr. Forbes.
Mr. Sconce.	Mr. Harington.
The Chairman.	Mr. Beadon.
	Sir Bartle Frere.

So the Motion was negatived.

THE CHAIRMAN moved the addition of the following words to the Section :—

"which shall not be inflicted upon any female."

Sir Bartle Frere

The Motion was carried, and the Section as amended then passed.

Section 9 provided as follows :—

"Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited but shall not be excessive."

SIR MORDAUNT WELLS drew the attention of the Council to the state of the law in England where, if a man were committed for the non-payment of an excessive fine, he might get out a writ of *Habeas Corpus*, and there was his remedy.

MR. HARINGTON said, here the party would have an appeal.

SIR MORDAUNT WELLS said, that was quite a different thing. He had lately seen, while looking over the decisions of the Sudder Court, a case in which, if he was not mistaken, his Honorable friend on his right (Mr. Sconce) was one of the Judges before whom the appeal was heard. The case was that of a Native Zemindar who had appealed against the sentence of the Court below imposing a fine of five thousand Rupees, but whose petition was not finally disposed of until several weeks after the imposition of the fine. Independently of that, the expense of an appeal must be taken into consideration. Was it reasonble to expect that a person who was not able to pay a fine, could afford to pay the expense of an appeal against the payment of that fine? Now he (Sir Mordaunt Wells) would say that, in the case of a fine, we ought to limit it, because in India the writ of *Habeas Corpus*, the Bill of Rights, and Magna Charta were practically of no force. Was an Assistant Magistrate of 3, 4, or 5 years' standing to have the power of fining a man three thousand Rupees? It would probably cost the man about two or three hundred Rupees to appeal to the Magistrate, and probably the same sum to appeal to the Judge, and then again to the Sudder Court. He (Sir Mordaunt Wells) would propose to limit the power as regards Magistrates to five hundred Rupees. If the Magistrate was not satisfied with the adequacy of

that amount, he could send the man to the Sessions for trial.

MR. HARINGTON said, in effect there would be little if any difference between the two remedies. In the one case the remedy was by a writ of *Habeas Corpus*, in the other it would be by an appeal, which in the Criminal Courts involved scarcely any expense, and there was no reason why the remedy should not be applied with the same degree of expedition in the one case as in the other. He had no decided objection to the suggestion of the Honorable and learned Judge, that the amount of fine should be limited, but he might remark that the Section was framed by the Law Commissioners very much as it now stood. The Select Committee had only thought it necessary to add the concluding words, which required that the fine should not be excessive. These words were taken from the English law.

THE CHAIRMAN said, this Code had to define offences, and to declare the punishment for them. The Code of Procedure would limit the amount of fine to be imposed by particular Officers. The Honorable and learned Judge had spoken of the *Habeas Corpus*. But he (the Chairman) was not sure that any Court could interfere in such a case. For instance, suppose a Court of competent jurisdiction like the Court of Exchequer, were to commit a man for non-payment of a fine, and he applied to the Court of King's Bench for a writ of *Habeas Corpus*. If it were granted, the return to the writ would show that the person was detained by sufficient authority. With reference to the question whether the law could lay down any specific sum as a maximum of fine, he (the Chairman) felt great difficulty. The matter was fully considered by the Law Commissioners, and he could not do better than read the words of the Law Commissioners relating to this subject. They said—

"Fine is one of the most common punishments in every part of the world, and it is a punishment the advantages of which are so great and obvious that we propose to authorize the Courts to inflict it in every case, except where forfeiture of all property is necessarily part of the punishment. Yet the punishment of fine is open to some objections. Death, imprisonment, transportation, banishment, solitude, compelled labor, are not, indeed, equally disagreeable to all men. But they are so disagreeable to all men that the Legislature, in assigning these punishments to offences, may safely neglect the differences produced by temper and situation. With fine the case is different. In imposing a fine it is always necessary to have as much regard to the pecuniary circumstances of the offender, as to the character and magnitude of the offence. The mulct which is ruinous to a laborer is easily borne by a tradesman, and it is absolutely unfelt by a rich zemindar.

"It is impossible to fix any limit to the amount of a fine which will not either be so high as to be ruinous to the poor, or so low as to be no object of terror to the rich. There are many millions in India who would be utterly unable to pay a fine of fifty Rupees; there are hundreds of thousands from whom such a fine might be levied, but whom it would reduce to extreme distress; there are thousands to whom it would give very little uneasiness; there are hundreds to whom it would be a matter of perfect indifference, and who would not cross a room to avoid it. The number of the poor in every country exceeds in a very great ratio the number of the rich. The number of poor criminals exceeds the number of rich criminals in a still greater ratio. And to the poor criminal it is a matter of absolute indifference whether the fine to which he is liable be limited or not, unless it be so limited as to render it quite inefficient as a mode of punishing the rich. To a man who has no capital, who has laid by nothing, whose monthly wages are just sufficient to provide himself and his family with their monthly rice, it matters not whether the fine for assault be left to be settled by the discretion of the Courts, or whether a hundred Rupees be fixed as the maximum. There are no degrees in impossibility. He is no more able to pay a hundred Rupees than to pay a lac. A just and wise Judge, even if entrusted with a boundless discretion, will not, under ordinary circumstances, sentence such an offender to a fine of a hundred Rupees. And the limit of a hundred Rupees would leave it quite in the power of an unjust or inconsiderate judge to inflict on such an offender all the evil which can be inflicted on him by means of fine.

"If, in imitation of Mr. Livingston, we provide that no fine shall exceed one-fourth of the amount of the offender's property, no serious fine will ever be imposed in this country without a long and often a most unsatisfactory investigation, in which it would be necessary to decide many obscure questions of right purposely darkened by every artifice of chicanery. And even if this great practical difficulty did not exist, we should see strong objections to such a provision in a very large class of cases. Take the case of a corrupt judge who has accumulated a lac of rupees by his illicit practices. A fine which

should deprive such a man of the whole of his fortune would not appear to us excessive. And certainly we should think it most most undesirable that he should be allowed to retain 75,000 Rupees of his ill-gotten gains. Again: take the case of a man who has been suborned to commit perjury, and has received a great bribe for doing so. Such a man may have little or no property, except what he has received as a bribe. Yet it is evidently desirable that he should be compelled to disgorge the whole. No man ought ever to gain by breaking the law; and if Mr. Livingston's rule were adopted in this country, many would gain by breaking the law. To punish a man for a crime, and yet to leave in his possession three-fourths of the consideration which tempted him to commit the crime, is to hold out at once punishments for crime, and inducements to crime. It appears to us that the punishment of fine is a peculiarly appropriate punishment for all offences to which men are prompted by cupidity. For it is a punishment which operates directly on the very feeling which impels men to such offences. A man who has been guilty of great offences arising from cupidity, of forging a bill of exchange, for example, of keeping a receptacle for stolen goods, or of extensive embezzlement, ought, we conceive, to be so fined as to reduce him to poverty. That such a man should, when his imprisonment is over, return to the enjoyment of three-fourths of his property, a property which may be very large, and which may have been accumulated by his offences, appears to us highly objectionable. Those persons who are most likely to commit such offences would often be less deterred by knowing that the offender had passed several years in imprisonment, than encouraged by seeing him, after his liberation, enjoying the far larger part of his wealth.

"We have never seen any general rule for the limiting of fine, which we are disposed to adopt. The difficulty of framing a rule has evidently been felt by many eminent men. The authors of the Bill of Rights, with many instances of gross abuse fresh in their recollection, could devise no other rule than that excessive fines should not be imposed. And the authors of the Constitution of the United States, after the experience of another century, content themselves with repeating the words of the Bill of Rights.

"It will be seen that in cases which are not very heinous we propose to limit the amount of fine which the Courts may impose. But in serious cases we have left the amount of fine absolutely to their discretion; and we feel, as we have said, that, even in the cases where we have proposed to limit, such a limit will be no protection to the poor, who in every community are also the many. We feel that the extent of the discretion which we have thus left to the Courts is an evil, and that no sagacity and no rectitude of intention can secure a judge from occasional error. We conceive, however, that if fine is to be employed as a punishment, and no judicious person, we are persuaded, would propose to dispense with it, this evil must be endured. We shall attempt in the Code of Procedure to establish such a system of appeal as may prevent gross or frequent injustice from taking place."

Now the Code of Procedure, which had already passed a Committee of the whole Council, had not had an appendix added to it, and that was in consequence of this Code not having been passed. There was also a provision regarding the amount of fines in that Code, so that every thing had been done, as far as the framers of this Code were concerned, to prevent any injustice being committed, and with reference to the admirable note of the Law Commissioners which he had just read, the Select Committee had considered it unnecessary to alter the Section proposed by the Commissioners except laying down, as in the Bill of Rights, that the amount of fine should not be excessive.

SIR MORDAUNT WELLS said, he was much obliged to his Honorable and learned friend for having informed him as to the difficulty of putting a limit to the amount of fine in the Penal Code. He thought that his Honorable and learned friend's explanation was most satisfactory, and that it would be quite impossible to limit the amount of fine in the Penal Code.

The Section was then put and carried.

Sections 10 to 21 were also severally passed as they stood.

Section 22 provided as follows:—

"All offences falling within the following Chapters of this Code and thereby made punishable with imprisonment, and not with fine only, shall be punishable with flogging in addition to any other punishment with which such offences are thereby made punishable (that is to say).

Chapter VII—(Offences relating to the Army and Navy).
Chapter XI—(Offences against Public Justice).
Chapter XII—(Offences relating to coin and Government Stamps).
Chapter XVI—(Offences affecting the human body).
Chapter XVII—(Offences against property).
Chapter XXII—(Criminal intimidation, insult and annoyance). Also the offence of abetting any of the said offences. Also attempts to commit any of the said offences."

The Chairman

MR. SCONCE said, he had a strong objection to the introduction of this Section, the principle of which was to subject to flogging all persons who might be sentenced to imprisonment for any of the offences described in the six Chapters quoted. According to this Section, a person convicted under Section 10 Chapter VII, of the offence of wearing the sash of a soldier, or who wore a feather on his cap, was subject to thirty stripes. So also a person convicted under Section 6 of the same Chapter of harbouring a deserter, was subject to the same punishment. There were many other offences in the same and other Chapters to which he thought that flogging was not applicable; for instance, cases of culpable homicide and even assaults. What he particularly objected to was the form in which it was now proposed to apply the punishment to Chapters in a lump. Another objection which he had to the Section was, that it proposed to inflict flogging in addition to any other punishment to which a person was liable in respect of the same offence. It had been urged by the Honorable Member near him (Mr. Beadon) that the principal reason for adhering to flogging as a punishment was that imprisonment might be avoided; and if we imprisoned and flogged both, the punishment of flogging must be justified on some other ground than that referred to.

SIR MORDAUNT WELLS also objected to this Section, and repeated that he was strongly opposed to the infliction of corporal punishment on adults. He earnestly besought the Council to pause before they conferred such a power upon the Judges and Magistrates. He foresaw clearly that the consequence would be that he would be charged with partiality towards Europeans. People would say that here was an English Judge who would not flog a European, though the poor natives in the Mofussil had to submit to this most degrading punishment.

SIR BARTLE FRERE repeated that corporal punishment was an absolute necessity in the case of uncivilized persons. Except in such cases and in cases of brutality, it would not be resorted to. For his own part, he would far prefer to leave it to the discretion of a Judge.

MR. SCONCE said, if flogging were to be confined to uncivilized people, he should be glad if his Honorable friend would name the Districts in Bengal to which the rule would apply, and exempt the others. He would not leave it to the discretion of a Judge to inflict a punishment which, when once inflicted, was irrevocable. Other punishments operated more in the way of moral restraint: flogging was recommended, because it inflicted physical suffering. It did not act on the mind, but on the flesh, and might degenerate into vengeance. As at present advised, he (Mr. Sconce) was not disposed to extend the discretion to all Magistrates, of whom many were young and inexperienced, and some might be hasty and intemperate.

SIR MORDAUNT WELLS said, when we were discussing the Arms Bill the other day, it was urged as a reason against continuing the power of making domiciliary visits in search for Arms, that flogging was a barbarous punishment, and that the local Magistrates were not persons to be relied on. He did not think there were fifty out of the six hundred and fifty Members in the House of Commons, who would vote in favor of such a law, and here was this Legislative Council composed of eight Members going to introduce such a provision into the Penal Code for the whole of India, and to give any Magistrate of three years' standing the discretion of inflicting corporal punishment. If there was any thing more odious than another, it was the system of leaving large discretion in the hands of Magistrates and Judges. Public feeling against the flogging system was never so high as at this moment. It was true that flogging existed in the Army and Navy. But many of our public men in England entertained opinions that flogging did not repress offences. Even as regards Natives, nothing

would be more degrading to a Zemindar or Baboo than to be publicly flogged. If, as the Honorable Member of Council opposite (Sir Bartle Frere) had said, the punishment was required for barbarous countries, let us have a Code for civilized countries and another Code for barbarous countries. In either case, he would much prefer the punishment of hard labor. But as for flogging, he protested that, in the 19th century, such a punishment should be introduced into a law, and he would therefore propose to get rid of it altogether.

MR. HARINGTON said, he thought that the Honorable and learned Judge labored under some misapprehension in respect to the punishment of flogging, and that he imagined that they were now for the first time introducing that punishment. This, however, was not the case. In the Presidencies of Madras and Bombay, and in the Punjab and in Oude, as also within the limits of the Presidency Towns, flogging was one of the punishments in use. Throughout the Presidency of Bengal also it was included in the list of punishments until the year 1834, when it was discontinued by a Regulation passed by Lord William Bentinck. The effect of the discontinuance was generally considered to have been injurious, and as remarked by the Honorable Member of Council opposite (Mr Beadon), a strong feeling prevailed in favor of the revival of the penalty. The Select Committee on the Penal Code had to consider, whether they would do away with the punishment where it might now be inflicted, or whether they would retain it in those places, and restore it where it had been discontinued. They decided upon the latter course. Their reasons for the decision to which they came would be found in the Report presented to the Council, which he saw reason to think the Honorable and learned Judge (Sir Mordaunt Wells) could not have read. In that Report the Select Committee said—

"The most important are those in the Chapter "Of Punishments" which, with some others, we proceed to notice. We propose to include flogging among the punishments to be provided for offences. The Law Commissioners in a Note to this Chapter of the Code as prepared by them have stated the reasons why they did not think it desirable to place flogging in the list of punishments. We entirely concur with them in the opinion that it is a mode of punishment open to serious objection when inflicted for atrocious crimes with a severity proportioned to the magnitude of those crimes But moderate flogging as a punishment for certain classes of offences not of the most heinous kind has, we think, many advantages over other punishments, especially in this country. It is a punishment which, by the English Law now in force in the Supreme Court, may be inflicted for many offences. We believe that in India a sentence of imprisonment for a short term of years does not strike either the offender or the by-standers with the same fear as a sentence of flogging, while the latter punishment has this great advantage over imprisonment, that the offender escapes the evil influence of a jail. Such a system of prison discipline may indeed be hereafter devised as will (like the reforms alluded to by the Law Commissioners as being under consideration at the time of their report) be more salutary to offenders than stripes; but the expediency of this mode of punishment should at present be considered with reference to the existing system of prison discipline in the jails of India.

"We are satisfied that there is, among those who have considered this question, a very general concurrence of opinion in favor of flogging rather than imprisonment as a punishment for the less heinous kind of offences."

MR. FORBES would remind the Committee that the punishment of flogging had not very long ago been introduced into he Criminal Code of England by the late Sir Robert Peel, to meet cases in which men, without any real intention of injuring Her Majesty, had fired at the Queen for the sole purpose of enjoying the public notoriety of a trial for high treason, in full confidence that the penalty of treason would not be inflicted. Corporal punishment, though no doubt a very minor punishment to death was, in the cases to which he referred, only nominally a diminution of punishment for the offence for which these persons were tried, and was, in reality an enhancement of punishment because, as the punishment which the law awarded to the crime of high treason was not inflicted in these cases, the offenders got off altogether without punishment, so that to

inflict corporal punishment upon them was really and truly an aggravation of punishment, although nominally it was a diminution. For a disgraceful offence, the punishment was tolerated in England, and had, as he had shewn, been adopted very recently for a new class of offences, and he could see no reason why it should not be retained in India where it had always been in force.

The learned Judge had made some observations which were apparently intended to fix a charge of inconsistency against those Members who now supported this Section, but who had objected when the Arms Bill was under debate to certain propositions made from the North-Western Provinces to introduce into that law, a power to flog those who did not produce a certain quota of Arms that might be demanded from them. He thought the charge was not fairly made. On the occasion to which the learned Judge referred, the question was not whether flogging should be a punishment inflicted for a specific offence after conviction by a Judicial Officer, but whether the whole of the male inhabitants of one village should be flogged on mere suspicion of concealing Arms, because they had not been able to produce the same number of weapons in proportion to population as had been found in another village, and he must maintain that this was a very different thing from a proposal to make flogging a legal punishment after regular judicial conviction of some specified offence.

With reference to the learned Judge's remarks about wealthy Zemindars and respectable Baboos, and the impropriety of subjecting them to this punishment, he would remark in the first place, that it was not wealthy Zemindars or respectable Baboos who committed the offences for which it was proposed to prescribe the punishment, and in the second place that, practically, the objection started by the learned Judge had not been experienced. Corporal punishment had been allowed by law in the Madras Presidency for the last sixty years, and he had never yet heard of an instance of its improper infliction. He was certain that the Magistrates of Southern India would deeply regret being deprived of the power to award this punishment, and he should support the Section.

After some further discussion, the consideration of the Section was postponed until after the consideration of the Chapters to which it referred, so that the Council might have an opportunity of considering the offences to which flogging was applicable and those to which it was not applicable.

The Council then resumed its sitting.

INCOME TAX.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades, and Offices)."

WRECKED BOATS.

MR. SCONCE moved that the Bill "for the preservation of property recovered from Wrecked Boats" be referred to a Select Committee consisting of Mr. Beadon, Mr. Harington, Mr. Forbes, and the Mover.

UNIVERSITIES.

MR. FORBES moved that a communication received by him from the Registrar of the Madras University be laid upon the table and referred to the Select Committee on the Bill "for giving to the Universities of Calcutta, Madras, and Bombay the power of conferring Degrees in addition to those mentioned in Acts II, XXII, and XXVII of 1857."

Agreed to.

The Council adjourned at 6 o'clock on the Motion of Sir Bartle Frere, till Tuesday, the 21st instant, at 7 o'clock in the morning.

Tuesday Morning, August 21, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President.*

No other Member of the Council was this day present, and the Vice-President adjourned the Council till Saturday Morning, the 25th Instant, at 11 o'clock.

Saturday, August 25, 1860.

PRESENT :

The Hon'ble Sir Barnes Peacock, *Vice-President,* in the Chair.

Hon'ble Sir H. B. E. Frere, Hon'ble C. Beadon, H. B. Harington, Esq.,	H. Forbes, Esq., A. Sconce, Esq., and Hon'ble Sir M. L. Wells.

CUSTOMS DUTIES.

THE CLERK presented a Petition to the Council from certain proprietors and lessees of rum distilleries in the vicinity of Calcutta and in Jessore, praying for a reduction of the present rates of Duty upon the manufacture and exportation of rum.

MR. SCONCE moved that the Petition be printed.

Agreed to.

PENAL CODE.

THE CLERK presented a Petition from the British Indian Association against the infliction of corporal punishment for certain offences under the Penal Code.

THE VICE-PRESIDENT moved that the Petition be printed.

Agreed to.

PASSENGERS ACT.

THE CLERK reported to the Council that he had received from the Home Department copies of papers relative to the question of extending the provisions of the Imperial Passengers Act of 1855 to the carriage of passengers from India under the authority conveyed in Section 99 of that Act.

SIR BARTLE FRERE moved that these papers be printed.

Agreed to.

LICENSING OF ARTS, TRADES, AND PROFESSIONS.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for the Licensing of Arts, Trades, and Professions"—

SIR BARTLE FRERE said that, the last time he had the honor to address the Council with regard to the Financial measures of Government, he expressed the diffidence and regret which he felt in being charged with the amendment of any measure which had been brought in and carried through the Council by the late Mr. Wilson. Since then it had pleased Providence to take him from among us, and he (Sir Bartle Frere) believed there was not throughout India a single right-minded Englishman who did not feel his death as a personal as well as a national loss. He was sure that, when the intelligence of this melancholy event reached England, Mr. Wilson's loss would be mourned in the same manner as was that of Neil, of Havelock, of Nicholson, and of Peel. What Mr. Wilson's loss would be to Government, those only who had labored with him could understand. If he felt any diffidence when it fell to his (Sir Bartle Frere's) lot to make a few amendments of oversights and omissions in a measure stamped with the approval of his Right Honorable friend, when he hoped that his (Mr. Wilson's) absence from the Council was only temporary—how much stronger must those feelings be when he found himself entrusted with the prosecution of a measure which had been brought in and left incomplete by his Right Honorable friend. For any question of this kind and, indeed, for any question connected with finance, Mr. Wilson had peculiar privileges and qualifications, and they were as conspicuous and as

generally acknowledged in this Council as in any other part of the Queen's dominions. It was not only that we had experience of his large statesmanlike views and great abilities in the transaction of every branch of public business, but we felt the same confidence in his opinions on every subject connected with finance which was accorded to him by men of every party at home. He was a master in his craft, and no other man could possibly succeed in acquiring that amount of public confidence in his judgment on all financial matters, which Mr. Wilson so justly possessed. He (Sir Bartle Frere) could claim no such qualification, and he should have felt the greatest difficulty in undertaking the completion of any work which his Right Honorable friend had left incomplete, had it not been as a matter of duty to the Government to which he had the honor to belong, and in compliance with the wish which his Right Honorable friend had expressed on his dying bed. Undertaking the task under such circumstances, he (Sir Bartle Frere) felt that he was only doing a simple duty, and he undertook that duty in the hope that strength would be given him to carry it through. It was in no spirit of presumption that he would proceed with the task, but there were considerations which encouraged him to proceed. In the first place, the work which the Right Honorable Gentleman left partially complete, was founded on those great principles which for years past had regulated our financial policy in all other parts of the British Empire, principles so broad and simple that, like all great truths, they appear after demonstration almost self-evident, and once laid down by a master workman, the only difficulty was to ensure their being truly and faithfully carried out. Then, again, there were peculiar facilities in following Mr. Wilson through anything to which he had put his hand. Such was his clearness of intellect and such his thorough business habits, that he planned from before-hand with the utmost distinctness whatever he intended to execute, and he (Sir Bartle Frere) believed that, at the time he commenced upon his financial measures, his Right Honorable friend had clearly laid out before him schemes of work which he expected would have occupied him many years before their fulfilment. He left everything connected with the measures on which he was engaged, so prepared, that there was less difficulty than might have been expected in taking up his work. But, besides this, there were also two sources of confidence, which enabled him (Sir Bartle Frere) to feel some trust that he might successfully carry through the task before him. He (Sir Bartle Frere) had, and so, he was sure, every other Member of this Council had, the most unbounded confidence in the resources of India, if time only were allowed for their full development. He also felt the most unbounded confidence in the patriotic feelings of our fellow countrymen who were associated with us in this country, whether in or out of the Government service, and he felt sure that he might rely on the entire support of this Council in giving its honest experience and advice on every subject that came before us. Still the task was one of no ordinary difficulty. Relying on the assistance he had before him, he hoped to be able to carry it through, and whatever might become of the workman, the work would be carried on for the sake of the country.

When Mr. Wilson last gave a sketch of his financial schemes, he stated very clearly the condition in which we then stood, and he sketched out the measures by which he hoped to see that condition improved in the course of the next twelve months. He first of all adverted to the reductions which were necessary to be made in all branches of expenditure. The period had not yet arrived, and was not likely for some time to come, when it would be possible to state the precise amount to which those reductions might reach. But he might briefly state that there was even greater promise of large reductions of expenditure being carried into effect than when Mr. Wilson made his financial statement. Since then we had been seriously threatened with a famine in the North-Western Provinces, and a considerable diminution of revenue was anticipated.

He trusted, however, that all ground for this serious alarm might now be said to be at an end. It was true that there had not been a good season, but still there was ground to hope it would not be such a one as would embarrass the finances, or seriously derange the calculations on which Mr. Wilson founded his scheme. Since his last general speech on the question, the Military Finance Commission had continued its useful labors, and now at the end of twelve months after its appointment, the wisdom of that measure was becoming apparent, and he had, no doubt, it would be found a most powerful engine in bringing our finances into order. Since April last, a second Commission had been appointed for the purpose of reducing the expenditure in the Civil Establishments, but it was impossible as yet to say what the result would be. Within the last few days a Police Commission had also been appointed, and it was to be hoped that it would be found most useful in effecting a reduction in the expenditure on account of Police and other levies and semi-military bodies. Above all, there was that very effective system of estimate, budget, and audit as explained in the published Resolution of Government. It would take fully a twelve month before that system could come into full and active operation; but it was to be hoped that the measure was a sound one, and would in future years be of the utmost service to the Government, by enabling them to control the general expenditure of the State. He might mention, that, during the current year, the budget system had for the first time been in force in the Public Works Department. Out of the sum total at the disposal of the Government of India for Public Works, assignments had been made to each Government in proportion to their wants as previously estimated by the local Governments themselves, and these assignments were made in such a form as would leave to the local Government much greater latitude and choice in sanctioning particular works, and would be the foundation of a system which would enable the local Governments to make the best possible use of that proportion of the resources of the State which the Government of India would be able to place at their disposal. But as Mr. Wilson repeatedly reminded us, the utmost extent of our reduction could never make both ends meet without additional taxation. He need not tell the Council that the Income Tax, the Stamp Act, and other measures of Government to increase the revenue, had already been passed. He proposed to-day to explain briefly the alterations which Mr. Wilson proposed in the general provisions of the Licensing Bill. On some future day he hoped to address the Council on the subject of the Currency measure, which the Right Honorable Gentleman had left in so very advanced a state that he (Sir Bartle Frere) anticipated no serious difficulty in carrying it into effect.

He would now explain the principal changes which it was proposed to make in the Licensing Bill already before the Council. He would not ask the Council to go into Committee on the Bill to-day, as he wished to have the proposed amendments printed and placed in the hands of Honorable Members before they came on for discussion.

Mr. Wilson had, in the first place, proposed a change in the title of the Bill, so as to make it one for the grant of certificates to persons exercising Arts, Trades, or Professions, and of Licenses to dealers in Tobacco.

In the second Section of the Bill, it was proposed to omit the enumeration of professions introduced by the Select Committee, and to revert to the definition in the original Bill.

As the Bill now stood, many persons would be liable to pay both License Tax and Income Tax. This was not in accordance with the principle of the License Tax as a supplement to the Income Tax rather than as an additional impost. It was proposed, therefore, that in all cases where the two taxes would be coincident, as the Bill now stood, one tax should only be levied, so as to make the Bill a supplement to the Income Tax Act.

Sir Bartle Frere

It was proposed to insert a provision, that certificates of persons dying, or transferring any business, should be transferable to the heirs and assigns of the person who took out the certificate, and it was proposed to extend the exemptions in Section XV of the Bill, so as to include all laborers and working men whose wages did not exceed four annas per diem; and to soldiers, sailors, and other persons in the receipt of salaries from Government. This brought him (Sir Bartle Frere) to the objection which had been raised to the Bill that it taxed Artisans, Tradesmen, and Professional persons and exempted salaried servants of Government, annuitants, and pensioners. But he (Sir Bartle Frere) hoped, that he could show that this objection was not well founded; at any rate it would be less applicable to the Bill as it was proposed to amend it. He need not remind the Council that there were large numbers of those who benefited more than any other class of the community by the prosperity of the country, and who contributed most largely in England to the public revenue, by paying to the Excise and Customs, but who here escaped almost untaxed. There was no class on whom the burden of supporting the State fell so lightly as on the minor Traders and Artisans, and there was none so benefited by good and orderly Government; their, profits and earnings increased with the prosperity of the country in a far higher ratio than most other classes, and it was right that they should contribute in proportion. But it was otherwise with persons who had fixed incomes from salaries, pensions, or annuities. Their incomes were stationary, while the cost of living was greatly enhanced. To take the example which had been cited, it had been asked why should Barristers pay, and Judges be exempted? The answer was that Barristers prospered with the growing prosperity of the country, and their incomes increased, whereas the Judge's income was stationary, though the cost of living had a constant tendency in a prosperous community to increase. This example would hardly bear illustration under the Bill, as he (Sir Bartle Frere) proposed to alter it, because Barristers would generally be exempt, but he mentioned it as an illustration of the essential difference in the principle which should regulate the taxation of the two classes.

With regard to Tobacco, a great mass of very valuable information had been received from the various Governments, the more important portions of which would be laid before the Council. Much of it had bearing on other questions than that immediately before us in the Bill, which related merely to the rates to be charged for Tobacco Licenses. The object of Government was to fix the tax at an amount so moderate as not to force any one who now dealt in Tobacco to give up that branch of business, so that every present seller of Tobacco might take out his License and continue to sell. For this purpose, the rates had been fixed purposely low, and would vary in classes from one hundred Rupees for the largest wholesale dealers down to two Rupees per annum for petty retail sale.

He (Sir Bartle Frere) hoped, next week, that the proposed amendments would be in the hands of all Members, in time to admit of the Council proceeding to consider the Bill in Committee at their next sitting, and he, therefore, begged to move that the Committee on the Bill be postponed till Saturday next.

SIR MORDAUNT WELLS said, when the Bill was last in Committee, he, together with one or two other Members, expressed some objections to the Bill as it then stood. Certainly his main objection had been met by the alterations which had since been made, and which had been referred to by his Honorable friend opposite (Sir Bartle Frere). But as he (Sir Mordaunt Wells) should, in all probability, not have another opportunity of stating his views, he wished to explain why he was prepared to give his assent to the Bill as it now stood. His main objection to the Bill was that he considered that, if persons in the receipt of two hundred Rupees a year who came under the Income Tax, were to be subject to a Licensing Tax, we should be

taxing them at the rate of seven per cent. upon their incomes, and he believed it was felt by several Members of that Council that that was an amount of taxation which would press very heavily upon the industry and energy of the lower classes, and that whatever might be the necessities of the State, it would be far more advisable that we should seek for other sources of income than act unjustly towards the poor. From the statement now made by his Honorable friend (Sir Bartle Frere), it appeared that it was not now intended that the Licensing Tax should apply to any individual who was liable to the Income Tax, and that, if the Council should sanction that measure as now explained, the result would be what the late Sir Robert Peel and his Right Honorable friend so much desired, namely, that all classes should contribute more or less according to their means to an Income Tax, because all classes would benefit by the improved condition and prosperity of the country. There were many persons on five hundred and eight hundred Rupees a year, who could not afford to pay an Income Tax so well as the Artisan, who had not to pay for the education of his children, and had no position to maintain or other claims upon his purse, as the former had. Besides, an Artisan in paying that tax, would, more than any other class, be directly benefited by the prosperity of the country, and he (Sir Mordaunt Wells) therefore rejoiced that this Bill, in conjunction with the Income Tax Bill, would have the effect of imposing a general tax, and that all classes would be improved by the system of finance introduced by his late friend Mr. Wilson. He (Sir Mordaunt Wells) would therefore say that whatever objections he might have taken to the provisions of the Bill as it formerly stood, if he had continued in the Council, he should have given the Government his warm support in carrying it through. It was impossible to realize the loss which we had sustained in the death of his Right Honorable and lamented friend Mr. Wilson. He (Sir Mordaunt Wells) had the privilege of knowing his position and watching him in his eminently successful career in England. Perhaps he (Sir Mordaunt Wells) was the only Member of this Council who had had that opportunity. He knew well the confidence which had been reposed in him by the distinguished men with whom he acted from time to time, and he (Sir Mordaunt Wells) would only say that at the time his lamented friend took office in India, it was a sacrifice which no one could thoroughly realize. When we knew the degree of labor which the Right Honorable Gentleman devoted to his duties, and that in the face of repeated warnings our late colleague continued to go on in the work without looking at the danger which surrounded him, there was no instance in the history of this country of a man who was so completely regardless of personal considerations as to persevere in his work up to the very hour of his death, solely from the high motive of doing his duty to his country. In making these observations, he was persuaded that they would be concurred in by every Member of this Council, and he made them, because he might not have another opportunity of addressing the Council. He should look back with satisfaction that he was called upon to assist the Council in passing the Income Tax Bill, and he rejoiced to say that, as had been remarked by the Right Honorable Gentleman, the Council had passed so important a measure without a single division on a question of principle. It was gratifying to know that this had been the case when we recollected that, when the same measure was introduced in England, it was met with very strong opposition, and petitions upon petitions came pouring in from all classes against its passing into law. The support which his Right Honorable friend had met with from the European community in India was such that the people in England were utterly astonished at the favorable reception given to the Right Honorable Gentleman's measures by the European community. He was certain that if the European community had not supported the Government and his Right Honorable friend at such a critical time, with all his

Sir Mordaunt Wells

powers and all that persuasion so peculiar to him, the Income Tax would never have been carried out.

He (Sir Mordaunt Wells) had one more observation to make. It had been said that, in consequence of the loss which the country had sustained by the death of the Right Honorable Gentleman, there would be a pause in carrying out the measures left uncompleted by him. He rejoiced to see that such was not the case, and that the Government intended energetically to pursue those great schemes introduced into this Council by the late Right Honorable Mr. Wilson. Let the Executive Government pursue that course, and he was sure that success would crown their efforts. It was right that the millions of natives whom we governed should know that Englishmen could be found and would always be found to carry on the Queen's Government.

The Motion for postponement was then put and carried.

INDIAN PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Code.

Sections 1 and 2 of Chapter IV were passed as they stood.

Section 3 provided as follows:—

"Nothing is an offence which is done by a person by virtue of any power given to him by law, or in the exercise of any such power to the best of his judgment exerted in good faith."

THE CHAIRMAN moved the restoration of the following Section of the Original Code in lieu of the above:—

"Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law, in good faith, believes himself to be justified by law in doing it."

Agreed to.

Sections 4 and 5 were passed as they stood.

Section 6 was transposed so as to stand after Section 2.

Sections 7 to 10 were passed as they stood.

Section 11 was passed after a verbal amendment.

Sections 12 to 22 were passed as they stood.

Section 23 was passed after a verbal amendment.

Sections 24 to 31 of Chapter IV and Section 1 of Chapter V were passed as they stood.

Sections 2 and 3 were passed after the transfer of an explanation from the former to the latter.

Sections 4 to 11 were passed as they stood.

Sections 12 and 13 were severally passed after a verbal amendment.

Section 1 of Chapter VI was passed after verbal amendments.

THE CHAIRMAN moved the introduction of the following new Section after Section 1:—

"Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property."

Agreed to.

Section 2 was passed after a verbal amendment.

Section 3 was passed as it stood.

Section 4 was negatived on the Motion of the Chairman.

Sections 5 and 6 were severally passed after amendments.

Sections 7 to 10 were passed as they stood.

The further consideration of the Bill was then postponed, and the Council resumed its sitting.

RETIREMENT OF SIR MORDAUNT WELLS.

SIR MORDAUNT WELLS said, as he was about to retire from the Council, he wished, before we adjourned to-day, to say a few words, for which he had the permission of His Excellency the Governor-General, in explanation of the circumstances under

which he had joined this Council and resigned his seat in it. In consequence of the alarming illness of Mr. LeGeyt, who had since died, and the absence of Sir James Outram, as well as the intended absence of his Honorable and learned colleague (Sir Charles Jackson), it was feared that the Members present would not suffice to form a quorum, and that the several important measures then under preparation could not be proceeded with. Sir Charles Jackson, therefore, before he left, informed the Governor-General that he had placed his resignation of his seat in this Council in the hands of the Honorable and learned Chief Justice, with a view to its being made use of in case of necessity. The contingency of Mr. LeGeyt's absence from the Presidency having arisen, Sir Charles Jackson's resignation was sent in and accepted, and on the 9th of June, he (Sir Mordaunt Wells) received an extremely considerate letter from the Governor-General, stating the position of affairs at the time, and requesting that he would come into the Council in place of Sir Charles Jackson. He did so, and took every possible step to prepare himself for the different measures which were coming on before the Council. He took no credit to himself for what he had done. He would only mention that at that time the Arms Bill, the Stamps Bill, the Income Tax Bill, and the Licensing Bill came under the consideration of the Council, and from the day he was appointed up to a few weeks ago, he was engaged with his work in the Council and in the Court for no less than fourteen or fifteen hours daily. He did not mean to say that the Council had in any way benefited by his labors, though he might state that he had endeavored to discharge his duties to the best of his ability, as far as his health permitted him. He cared not for the motives imputed to him by anonymous writers, and would not notice them. He came here to do his duty, and he could say that he had done that duty conscientiously. Though he might have differed on many points from several of his colleagues on what he considered matters of vital importance, he was sure they would do him the justice to acknowledge that he never flinched from taking his share of the business of the Council. He had consulted the Honorable and learned Vice-President as to the course he should take on the arrival of Sir Charles Jackson. He told the Honorable and learned Vice-President that he felt it would be most unfair for him (Sir Mordaunt Wells) to keep Sir Charles Jackson away from his seat in the Council even one day after his arrival in Calcutta. The advice of the Honorable and learned Vice-President was that he (Sir Mordaunt Wells) should remain some short time longer in Council until the Penal Code had been got through, as he (Sir Mordaunt Wells) had taken an active part in the consideration of that most important measure. But he (Sir Mordaunt Wells) did not think it likely that the Council could get through the Penal Code even in the course of a month, and there was another consideration which prevented him from acting upon the advice of the Honorable and learned Vice-President, and that was that he had been seriously advised to diminish his labors and seek needful rest. He had accordingly written to the Governor-General, requesting that he might be allowed to resign his seat in the Council from and after Thursday next. He had received the most perfect courtesy and kindness from the Governor-General. He thought it necessary to make these observations, because he did not wish that there should be any mistake as to the circumstances under which he joined the Council, and the reason of his retirement from it. He never had the slightest wish to enter the Council. On the contrary, since his arrival in the country, he had expressed his deliberate opinion that on constitutional grounds, it was politically inexpedient that the Puisne Judges should be Members of this Council. Considering the multifarious duties of a Puisne Judge, he had quite enough to occupy his whole time and attention without further burdening himself with legislative duties. But however this might be, he hoped the time would

BENGAL SECRETARIAT LIBRARY

never come when the Chief Justice should cease to be a Member of this Council, for he really did not see how the business of the Council could go on without him.

He would add that he had received the greatest consideration and attention from Honorable Members since he had entered this Council. There was not a Member of the Council from whom, although he might have differed from him in the course of debate, he had not personally received the utmost courtesy and kindness. He was thoroughly convinced that the work done here might fairly be compared with the work done by any Legislative Assembly in the world.

In conclusion, he thanked the Council for having allowed him to make this explanation on a matter which might, perhaps, be considered as purely p rsonal to himself, but upon which he was anxious that there should be no misapprehension.

THE VICE-PRESIDENT said, he could fully bear out the statement of the Honorable and learned Judge as to the circumstances which led to his joining this Council, as well as the reason of his retirement.

By the constitution of the Council, the Chief Justice was an Ex-Officio Member, and only one of the two Puisne Judges could be appointed by the Governor General to be a Member. The Governor-General had accordingly appointed Sir Charles Jackson to be a Member. But when Sir Charles Jackson left Calcutta, he left his resignation with him (the Vice-President) with a view to his making use of it, in case of any difficulty in forming a quorum arising, as was expected to arise, in consequence of Mr. LeGeyt's illness and Sir James Outram's absence. After Sir Charles Jackson had left, when the difficulty anticipated arose, he (the Vice-President) sent in Sir Charles Jackson's resignation, and the Governor-General appointed his Honorable and learned friend (Sir Mordaunt Wells) unconditionally. His Honorable and learned friend having once been appointed, could not be removed. His resignation therefore was a purely voluntary act, and he (the Vice-President) thought that there was no one here who could not but admire the high sense of honor which had induced him to retire from the Council. His Honorable and learned friend had spoken to him on the subject, and he (the Vice-President) had suggested that, as his Honorable and learned friend had prepared himself for the discussion of the Penal Code which had then been partly settled by a Committee of the whole Council, and as Sir Charles Jackson might possibly not be prepared immediately on his arrival, his Honorable and learned friend should continue in the Council until that measure was disposed of. It was considered at that time that the Code would probably have been almost completed before Sir Charles Jackson's arrival, and he (the Vice-President) thought that his Honorable and learned friend rather acceded to the suggestion, until the other day when his Honorable and learned friend informed him that, as the Code could not be completed at once, he was bound by honor not to remain in the Council a day longer than the absence of Sir Charles Jackson might render absolutely necessary. He (the Vice-President) could not say anything, though he deeply regretted losing his valuable assistance. No one could but admire the indefatigable zeal and attention which he had brought to bear on the discharge of his duties. For weeks the Council had assembled morning after morning, adjourning at an hour which, considering his Supreme Court duties, left the Honorable and learned Member scarcely any time to eat his breakfast; indeed several mornings he had been obliged to go into Court without his breakfast. He (the Vice-President) remembered his Honorable and learned friend on several occasions hastily coming into his (the Vice-President's) room and snatching a little breakfast. We must all therefore admire the manner in which the Honorable and learned Member had devoted himself to the public service not only by coming into this Council as he did, and enabling the Council to go on with its duties when short of Mem-

bers, but also by applying himself as he had done at the sacrifice of his health.

With reference to the question raised by his Honorable and learned friend as to the expediency of Puisne Judges having a seat in this Council, he (the Vice-President) must confess he did not agree with him. He saw no objection, constitutional or otherwise, to Puisne Judges being Members of this Council. He could see no greater objection to Puisne Judges sitting in the Council than there could be to the Chief Justice. His Honorable and learned friend had made some complimentary observations regarding himself for which he (the Vice-President) felt much obliged to him. He (the Vice-President) had always endeavored to do his duty to the best of his ability, and he trusted that he should continue to do so as long as he had a seat in the Council. He had done nothing more. If the Government at home should think that, for political or other reasons, the Judges ought not to continue in the Council, he should cheerfully bow to their decision.

SIR BARTLE FRERE said, he was not aware, when he came down to the Council to-day, that his Honorable and learned friend opposite intended to make a statement on the subject, or that we were so soon to lose his services as a Member of this Council. But he thought he could safely say even without having had an opportunity of consulting the head of the Government, that the Government of India was under great obligation to the Honorable and learned Judge for the able manner in which he came and assisted in carrying on the business of the Council. It was not only that he enabled us to form a quorum, but that he assisted us in the discussions which took place on the Income Tax Bill, the Stamp Bill, and, he (Sir Bartle Frere) would make no exception, the Arms Bill. No body who had taken an interest in the proceedings of the Council lately, could have failed to see how much attention the Honorable and learned Gentleman had applied to every subject which came before us. His Honorable and learned friend had differed on many points from other Members of the Council, and from none more than from himself (Sir Bartle Frere). But he (Sir Bartle Frere) had never seen any opinion drop from his Honorable and learned friend which was not the expression of an independent and honest judgment, and which, he (Sir Bartle Frere) had no doubt, had a beneficial effect upon all of us. Nobody could have attended the meetings of this Council without noticing the earnest attention which the Honorable and learned Gentleman had paid to the proceedings of the Council, and the personal labor which the Honorable and learned Judge had brought to bear upon the discharge of his duties. He (Sir Bartle Frere) could only regret that the Honorable and learned Gentleman's health should have suffered in consequence, and he begged in behalf of himself and the Council to return him their hearty thanks for the assistance which he had rendered them.

He (Sir Bartle Frere) would not here express any opinion as to the question raised by the Honorable and learned Judge. He would only say that it would be impossible for our deliberations to have been presided over with greater dignity or ability than ever since the present Honorable and learned Vice-President had filled the Chair, and whatever opinions might be held as to the political expediency of Puisne Judges of Her Majesty's Supreme Court sitting in this Council, we all had reason to feel our obligations to those trained legal minds which had so often thrown light upon their proceedings.

The Council adjourned.

The Vice-President

(This leaf to be cancelled on the issue of Part IX.)

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He would add that he had received the greatest consideration and attention from Honorable Members since he had entered this Council. There was not a Member of the Council from whom, although he might have differed from him in the course of debate, he had not personally received the utmost courtesy and kindness. He was thoroughly convinced that the work done here might fairly be compared with the work done by any Legislative Assembly in the world.

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The Council adjourned.

Saturday, September 1, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq,
Hon'ble C. Beadon,	A. Sconce, Esq.,
H. B. Harington, Esq,	and C. J. Erskine, Esq.

NEW MEMBER.

MR. ERSKINE was duly sworn, and took his seat as a Member of the Council for the Bombay Presidency.

CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received a communication from the Government of Bengal, forwarding papers containing opinions on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

MR. HARINGTON moved that the above communication be printed.

Agreed to.

AFFRAYS (BENGAL).

MR. SCONCE presented to the Council a correspondence received by him from the Government of Bengal, on the subject of affrays, and moved that it lie on the table.

Agreed to.

EMIGRATION TO ST. KITTS.

SIR BARTLE FRERE presented the Report of the Select Committee on the Bill "relating to the Emigration of Native Laborers to the British Colony of St. Kitts."

EMIGRATION (FRENCH COLONIES).

MR. BEADON postponed the first reading of the Bill "relating to the emigration of Native Laborers to the French Colonies," as he had discovered that it was one which, according to the Standing Orders, required at least one week's notice before the Motion for first reading could be made. The Bill was founded upon a Convention between the French and English Governments, having for its object the suppression of the slave trade in the French Colonies, by supplying them with Indian Laborers. He therefore gave notice of the first reading of the Bill next Saturday.

STAMP DUTIES.

MR. BEADON said, he begged to propose a suspension of the Standing Orders, with a view to his bringing in a Bill for amending the Stamp Law recently passed by the Council. The necessity for suspending the Standing Orders arose from the fact that, as that law would come into operation from the 1st of next month, unless immediate steps were taken for carrying into effect the proposed changes in the law, which he should presently notice, considerable public and private inconvenience would arise. The Stamp Act was carried through the Council before he had the honor of a seat in it. The task which he had now undertaken more properly appertained to his Honorable friend, the Member for Bengal, who had charge of the original measure; but in introducing the present Bill, he (Mr. Beadon) had had the permission of his Honorable friend, to whom he had stated the circumstances which had led to the necessity of fresh legislation on the subject. He (Mr. Beadon) might state that the defects in the existing law, which it was now proposed to amend, became apparent to the Governor-General in Council only yesterday, and as he was fully informed in regard to these defects, and the means by which the Government desired to remedy them, it had been thought proper that the management of the Bill should devolve upon him.

The first point was as regarded the applicability of the Act to the Straits Settlements. It was not the intention of the Government that the Act should apply to those Settlements. The question of removing the Straits Settlements from the control of the Government of India was now under the consideration of Her Majesty's Government, and it was therefore not considered advisable to include those Settlements in any new measures, especially financial measures, which might be passed by this Council. This Bill accordingly provided that the Stamp Act should not extend to the Straits Settlements.

The next point to which he would advert was this—There was a class of documents for which the use of adhesive Stamps was necessarily imperative. He meant Foreign Bills of Exchange, the Duties on which under the law, as it now stood, must be denoted by adhesive Stamps. But in fact there were no adhesive Stamps ready for the purpose, and they could not be

manufactured in India. An application had been sent to England for such Stamps of various denominations, but it was not possible that the indent could be executed for some months. It was therefore his intention to propose that so much of the Act as imposed Duties on Bills of Exchange, Letters of Credit, Drafts, and the like, if payable at any period not exceeding one year after date or sight, or otherwise related to such instruments, should not come into force until the 1st of January 1861, or until such subsequent date as the Governor-General in Council, by an order in the Gazette, might prescribe. In the meantime it was not proposed to allow that particular class of documents to be exempt from Stamp Duty altogether, and, therefore, he proposed, until such time, to revive all Regulations and Acts repealed by the present Act which related to such instruments.

The next point to which he had to refer also arose from the impossibility of procuring a proper supply of adhesive Stamps. Section V provided as follows :—

"It shall be lawful until the Governor-General in Council shall direct to the contrary by an order to be published in the Gazette, to use a Postage Stamp of the value of half anna on every Receipt, Draft, or order for which a half anna Stamp is required by this Act."

It was equally necessary that the same provision should be made for one anna Stamps. As the Council would observe, he did not propose to postpone the operation of the Act with regard to documents requiring a Stamp of one anna, but simply to authorize the use of Postage Stamps of that value for the purpose until the Governor-General in Council should otherwise direct.

The next was a penal provision. The Post Office Act XVII of 1854 provided that, if any one should use a Stamp which had already been used upon a letter, he should be subject to a penalty ; and the Stamp Act also provided against the use of a Stamp, once used on a receipt or draft, a second time on any document of the same kind. But there was no provision of law which made it penal to use, as an adhesive Stamp on any Draft, Order, &c., a Postage Stamp which had been used on a letter, and *vice versâ*. He therefore proposed to impose in such cases the same penalty as was provided in the Stamp Act for the second use of an adhesive Stamp.

There was one other point on which it was necessary to legislate. Under the head of Conveyances in Schedule A were transfers of shares in Banking Corporations or Joint Stock Companies, which were required to be on stamped paper. It seemed to have been overlooked, he thought, when the former Act was passed, that the only Stamp which could be used in such cases was an adhesive Stamp. The Act only provided for the use of adhesive Stamps on Receipts, Drafts, and Orders, but made no provision for their being used on transfers of shares. This was a mistake which, he thought, should be corrected by the present Bill But as in this case also the difficulty would arise of procuring special adhesive Stamps, he proposed to enact that—

"Until the 1st January 1861, or such subsequent date as may be prescribed, every transfer of the shares of any such Corporation or Company which can now be effected by endorsement, shall be accompanied by a deed or memorandum of transfer bearing a Stamp of the value prescribed for such transfers, and no such transfer shall be valid, unless it be accompanied by a deed or memorandum stamped as aforesaid, any thing in any law to the contrary notwithstanding"

For the present, it was necessary to provide that such transfers should be accompanied by a deed or memorandum of transfer bearing the requisite Stamp, without which the transaction would not be valid.

The Bill would be printed, and be in the hands of Honorable Members before next Saturday. If no serious objection should be made to the Bill, and if no material amendments were brought forward, it was his intention to propose that it should be read a second time next Saturday, and then move for a suspension of the Standing Orders with a view to carry the Bill through its remaining stages forthwith.

He now begged to move that the Standing Orders be suspended to enable him to move the first reading of the Bill.

SIR BARTLE FRERE seconded the Motion, which was put and carried.

MR. BEADON then moved that the Bill be read a first time.

The Bill was read a first time.

LICENSING OF ARTS, TRADES, AND PROFESSIONS.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for the licensing of Arts, Trades, and Professions," the Council resolved into a Committee for the further consideration of the Bill.

Section I (the repealing Clause) was passed after a verbal amendment.

Section II provided as follows :—

"From and after the said day of every person who shall carry on any lawful Art, Trade, or Profession as hereinafter described, shall be required to take out such license as is in Schedule A to this Act annexed directed, namely :—

Every person who shall carry on any Art or trade having for its object the procurement of gain to such person :

Every Company or Association or body of persons who shall carry on any Art or Trade as aforesaid, whether constituted a Company by Act of Parliament, Royal Charter, Letters Patent, or Act of the Legislative Council of India; or constituted or regulated by deed of settlement or other instrument :

Every partnership of persons who shall carry on any Art or Trade for the procurement of gain to such partnership :

Every practising Barrister, Attorney, Vakeel, and Mookhtear ; every Member of any College of Physicians or College of Surgeons, and every Medical Graduate of any University or College, not being in Her Majesty's Army or in Her Majesty's Indian Army ; every Architect ; every Civil Engineer."

SIR BARTLE FRERE begged to move the omission of this Section and the substitution of the following :—

"From and after the 1st day of January 1861, every person in India who shall exercise any lawful Art or Trade shall be required to take out such certificate as is in Schedule A to this Act specified."

MR. SCONCE said, if he was not out of time in rising to offer some observations on Schedule A., which was referred to in the Section now before the Council, he begged to express his conviction that both as to the arrangement of the classes and the rates of Duty, the Schedule, as it was now framed, was certainly a great improvement upon the original Schedule. He observed that the rates of Certificate Duty were now proposed to be four Rupees, two Rupees, and one Rupee. He observed also that in Section IX of the Bill there was an express provision that any party charged with Income Tax should not be obliged to take out a certificate and pay any tax under this Bill. It happened necessarily that the highest amount charged under this Bill would correspond with the lowest under the Income Tax. He wished to know how the assessing Officers were to be guided in fixing the amount which a man would have to pay ; and he thought that, if it were possible, some rules with regard to this point might, with advantage, be embodied in the Bill. He did not wish to raise any difficulty in the way of the Bill, but it would be satisfactory to him to know on what principle the Government proposed to carry it out. Was a man earning by a trade a hundred Rupees a year to be taxed four Rupees? That would be the same amount which a person having an income of two hundred Rupees a year would have to pay under the Income Tax. He would propose to exempt all earnings below seventy-five Rupees a year. He would do away with the three rates, and charge those earning between seventy-five and one hundred and twenty-five Rupees with one Rupee, and those earning more than one hundred and twenty-five Rupees and less than two hundred Rupees with two or two and a half Rupees. What was wanted, it seemed to him, was a declared basis of assessment which should be for the guidance both of Collectors and of the persons assessed. Upon this principle License Duties were charged in England. In the Bill of the present year respecting Wine Licenses, the rate of Duty was determined by the rent of the shop, a rent of £50 giving a Duty of so much, a rent of £20 so

much less. The same rule was before followed in England as to Spirit Licenses. But in every case, the mode of imposing the Duty varied according to the subject of the license. Medicine vendors in London paid £2, in cities 10 shillings, elsewhere 5 shillings, and so on. He alluded to these instances to show that a taxing Officer should not be allowed to take what he pleased, but that the law should specifically declare what he was to take. He was very sensible of the great improvement which had been made in the Bill, as it at present stood, and it was not his wish that what he now said, should be taken in the light of opposition, but that the Council might if possible introduce into it a more determinate scheme of assessment.

SIR BARTLE FRERE said, he was much obliged to the Honorable Member for his remarks, although, in making them, he had anticipated the discussion which would better take place on Schedule A. It was his (Sir Bartle Frere's) purpose, if the Bill should pass the Committee to-day, that it be reprinted, so as to elicit further criticism before its third reading, and that the instructions which it was proposed to issue to the Officers who would be entrusted with the duty of carrying them out, be at the same time printed. His Honorable friend would then have an opportunity of seeing them both together. There was only one general observation that he would make against adopting too closely the machinery of the Income Tax Act. In taxing large incomes, it was necessary that we should invest those who had to gather the tax with the power of verifying the means of those who paid the tax. Although this Bill would be a supplement to the Income Tax Act, it was not desirable that the machinery of the Income Tax should be applied to those who would have to pay it. He was sure that his Honorable friend would bear him out in saying that it was a matter of very great importance not to subject small traders to the inconvenience of enquiry as to their precise earning. He (Sir Bartle Frere) need not add that, when we should come to Schedule A, he would have no objection to discuss the question as to rates.

THE CHAIRMAN said, he confessed that, unless some very stringent rules for the collection of the tax were laid down and included in the Bill itself, it would prove very harrassing to the people. In the first place, he did not think that any man should be obliged to go beyond a certain distance to pay his tax The Bill provided that the Collector was the person from whom certificates were to be obtained. Now a man might have to go two hundred or three hundred miles to take out his certificate. Not only would he have to pay his tax, but he would also be obliged to go to the Collector to take out a license. As a great many people would be applying for licenses at one and the same time, he might be kept waiting several days before the Collector would attend to him. There was nothing in the Bill making it obligatory on the Collector to give a certificate within any specified time, and there was no provision in the Bill limiting the distance which a man should be required to go to take out a certificate. It might sometimes happen that a man would lose the benefit of several days' work to take out his certificate. He might not know under what class he was to come, and whether he was to pay one Rupee or four Rupees; and until this matter was determined, his work was to stop. He (the Chairman) believed that a much less objectionable form of tax than this might be that of a Poll Tax, and then there would be no difficulty as to the amount. He also thought that all such small duties should be collected at a man's own house, and not that he should be kept waiting as at a Court of Justice. He (the Chairman) would very much prefer a Poll Tax of one Rupee to be levied on every adult, and collected by the head man of each village, to whom a commission might be allowed. Then there would be much less inconvenience than would be felt by requiring persons to travel from a distance. He did not know if the rules would provide for the collec-

tion of the tax at a man's own house, because, if not, he (the Chairman) thought that a man ought to be discharged from all liability the moment he paid his money and came away. But then the difficulty would arise, whether he had paid or not. He did not know if the rules made any provision relative to a tender of the amount. A man might not know what he ought to pay, and he might tender what the Collector might not consider a sufficient amount. Then, again, there were trades carried on by women, such as feeding silk-worms, &c. Would they be required to travel forty or fifty miles to pay the tax and take out a license?

MR. FORBES said, he quite agreed with all that the Honorable and learned Chairman had said as to the oppression which this Bill was likely to cause, if, as was at present proposed, every person liable to be taxed under it was to be obliged to attend in person at the Collector's Office within the first fifteen days of every year in order to obtain a renewal of his license or certificate; and as he (Mr. Forbes) had had some experience in the collection of the Mohturfa Tax in Madras, he hoped that the Council would allow him to say a few words. In the first place, it was a great mistake for Honorable Members to suppose that these taxes, however small they might be individually, would, as a general rule, ever be paid in full. They could only be collected by instalments of two, three, or four annas at a time, and their collection must necessarily be spread over a period of four or five months. He intended, when the Committee came to Section VI of the Bill, which provided for the commencement and expiration of a license, to move an amendment to the effect that every license, when once granted, should remain in force until it was cancelled, or until such an improvement of the grantee's means should take place as to induce the Collector to place him under some class other than the one in which he had been originally placed. In the Presidency of Madras, where the Mohturfa Tax was still collected, the traders and artisans were not called upon to attend at the Collector's head-quarters within any limited time, nor was it necessary that the whole amount of the tax should be paid by each individual in advance at the time of taking out his license or certificate. The Collector or one of his Covenanted subordinates made an annual tour through each Pergunnah, and those liable to the Mohturfa Tax attended his office when it was nearest to their own residence—the tax was collected by instalments spread over half the year. The Honorable Member for Bengal, he believed, had calculated that from this tax about forty thousand Rupees would be annually received from each District in Lower Bengal. This would give an average of about twenty thousand payers, and that was alone sufficient to show how impracticable was the proposal that every man should attend and receive a license or certificate within the first fifteen days of each year. Unless the Honorable and learned Chairman were himself to move an amendment, he (Mr. Forbes) should move his amendment when the Committee came to Section VI of the Bill.

SIR BARTLE FRERE said, he entirely agreed with what had fallen from the Honorable and learned Chairman, and he (Sir Bartle Frere) hoped that, when the rules were printed, they would be found to meet many of his objections. If any Honorable Member should consider that any of those rules ought to be embodied in the Act, he (Sir Bartle Frere) would give him the opportunity of making a motion to that effect by moving for a recommittal of the Bill for that purpose. There was a great diversity of practice in the several districts. Considerable delay had occurred in receiving answers from different parts of the country, and one set of answers he received only late yesterday evening. With regard to the difficulty of collecting the tax, except at every man's residence, he (Sir Bartle Frere) might state from the experience which he had had, that the difficulty would be solely confined to Bengal. In the North-Western Provinces and the Punjab, and throughout Bombay and Madras, there was

a machinery which would render it unnecessary for persons assessed to this tax to leave their own village for the payment of it. It was only when they wished to appeal from an assessment that they had to attend on the Officer when he came near their residence. He (Sir Bartle Frere) had had some experience in collecting taxes, and nothing was clearer to him than that a person should get his receipt or check for what he had paid. The plan alluded to by the Honorable Member for Madras, of letting a certificate continue in operation until it was cancelled, was worthy of adoption. There must, however, be some provision for the payment of the tax in Bengal similar to what was provided for by the machinery now in force in the other parts of India, and the orders of the Lieutenant-Governor would, he hoped, suffice to carry out the views of the Honorable and learned Chairman, as soon as possible after the passing of the Act, with regard to the collection of the tax at every man's residence.

As to the question of levying a Poll Tax, if it were to have come up as an entirely new measure, he should have felt less difficulty in agreeing with the Honorable and learned Chairman. But the subject had already been under the consideration of Government, and had for many reasons which he need not recapitulate been negatived. It must be borne in mind that the existing Salt Tax was practically a Poll Tax, and another consideration was the immense machinery that would be required to carry it out. He (Sir Bartle Frere) hoped that the rules to which he had adverted, would be in the hands of Honorable Members, and, as he had already mentioned, if any part should be considered necessary to be embodied in the Bill, he would have no objection to their introduction.

MR. SCONCE said, he thought that the rules referred to should adequately provide for the assessment of the tax. He would draw the attention of the Council to the immensity of the work which the collection of this tax would involve. The moment the Bill was passed, the whole surface of Bengal would be set moving like an ant-hill. In a Minute written by the late Lieutenant-Governor of Bengal some years ago upon the Police, he found the number of villages in each District of the Regulation Provinces inserted. In the District of Dinagepore, there were 8,517 villages. Suppose there were ten men in each village liable to the tax, there would be 85,000 persons set moving upon the Collector to get certificates on the 1st of January, without which they would be liable to a penalty, if they carried on their trade. In the District of Tirhoot, there were 5,400 villages, and ten men from each would make 54,000 men. In the District of Midnapore, there were 11,000 villages, which would send 1,10,000 men to the Collector for the purpose of getting certificates. In the District of Mymensing, there were 13,000 villages. His object in drawing attention to this matter was strongly to urge upon the Government the necessity of appointing a large establishment for the purpose of collecting the tax, and he trusted that the Council would take care that the people were protected from the injustice to which a loosely drawn enactment would subject them.

THE CHAIRMAN said, with reference to what had fallen from the Honorable Member for Bengal, it would be impossible that all those persons in the villages could be made aware of the existence of such a law. How were you to bring the law to the knowledge of those persons? None of them might know that the Bill had been passed, so as to start for the Collectorate to pay the tax. Consequently every one of them who did not go and still carried on his trade, was liable to a penalty, to be inflicted by the Magistrate, of ten times what he would have been assessed by the Collector. How was the Magistrate to know whether the Collector would have assessed him at one Rupee or four Rupees. He (the Chairman) entertained a strong objection to the levy of a varying Duty, unless you could specify the Duty payable by particular classes. If a man earning fifty Rupees by trade were to be assessed at four Rupees, that would be tantamount to a tax of

eight per cent., whereas under the Income Tax, a man drawing two hundred Rupees paid two per cent. Upon the whole, therefore, he thought that the safer course would be to levy a uniform Duty of one Rupee, or if a varying Duty was to be imposed, to specify the rates for particular trades. He should prefer the former, rules being laid down for the guidance of the Officers by whom the tax was to be collected. It would be much better also to provide for the recovery of the tax by distress than for the imposition of a penalty of ten times the amount of the tax. If there were no goods to satisfy the distress, were you for one Rupee to throw the man into prison, whence he would issue a much worse man than when he went in? He proposed that the Section now before the Council should be altered, so that parties should not be required to take out a certificate, but to pay a Duty to be specified in the Schedule. He also thought that there should be provision for the payment of the Duty by half yearly or quarterly instalments.

MR. HARINGTON said, it appeared to him that, if parties were so extremely poor, that at the commencement of the year they were unable to pay a license or certificate Duty of one Rupee, and that the only way in which the Duty could be recovered from such persons was by extorting or extracting it in payments of two or three annas at a time, as they became possessed of so much money, they ought not to be required to pay the Duty at all. He did not understand that the Bill was intended to apply to artisans, who could pay the Duty which it imposed, only by annas and pies. The Government had very liberally, and as he thought wisely, provided in a later Section of the Bill for the exemption of persons from the Duty payable under the Bill, who could satisfy the Collector or other Officer appointed to collect the Duty, of their inability to pay the same, and it appeared to him that persons of the classes to which he had been referring, must be considered as falling within this exemption.

THE CHAIRMAN said, he had no wish to remove the exemption which now stood in the Bill in favor of those who were too poor to be taxed under it. The Income Tax, however, was paid quarterly, and he did not see why, when we were dealing with persons of small earnings, who could not afford to pay a Rupee a year at once, we should not allow them also to pay their Rupee by instalments.

MR. HARINGTON remarked, that there must be proof of, at the least, a yearly profit or gain of two hundred Rupees, or no Income Tax could be levied. This made the case of the payers of that tax very different from the classes to which he had referred.

MR. FORBES said, he thought it would be found, in reference to this tax, that it was the pence and not the pounds, that would contribute most largely to the coffers of the State. It would be the accumulation of the many small sums and not the few large sums, that would bring in the Government revenue.

MR. BEADON said, we were not altogether without experience in this matter. In Arracan, Pegu, and the Martaban Provinces, there had been a Poll Tax in force since the acquisition of the country. It was not so low, however, as one Rupee. But it was a tax of four Rupees a head in the more civilized and highly cultivated parts of the Provinces, and extended to all classes of the adult population above the age of 18 and under 60 years. The tax was not collected with any difficulty at all. It was due in one payment, but in practice it was taken in two or more instalments, and no difficulty was experienced in its collection. So much so that, when he was talking not long ago to that distinguished administrator, Colonel Phayre, that Officer strongly represented to him that he saw no use in introducing an Income Tax into Pegu, as he had the means of bringing in a much larger revenue to Government by increasing the present capitation tax by 25 per cent. or from 4 to 5 Rupees. But, of course, the Income Tax could not be adopted in one place and not in another; and although he was not prepared, as regards this Bill, to adopt a uniform tax instead of the graduated

tax now proposed, still the tax was collected in those Provinces, not only without any difficulty or oppression, but with the utmost cheerfulness. He only made these remarks with reference to what had fallen from the Honorable and learned Chairman, in order that the Council might give them such weight as it might think proper.

After some further discussion, the Chairman moved some amendments which were carried and which made the Section run as follows :—

"From and after the 1st day of January 1861, every person or partnership in India, who shall exercise any lawful Art, Trade, or dealing for gain or profit shall be required to pay the Duty specified in schedule A of this Act."

Section III provided as follows :—

"From and after the said every person dealing in tobacco shall also be required to take out such license as is in Schedule B to this Act annexed directed."

The Section was passed after some amendments, which made it stand as follows :—

"From and after the said 1st day of January 1861, every person in India dealing in tobacco shall be required to take out a license for each shop or place of business in which he or they shall so deal in tobacco. Every license granted under this Act shall specify the date of the grant thereof, the true name of the person to whom the same is granted, that such license is granted for dealing in tobacco, the sum to be paid annually for dealing in tobacco, so long as such license continues, and the place at which the grantee is licensed to sell or deal in tobacco. No license granted under this Act shall be transferable, except as hereinafter provided."

Section IV provided as follows :—

"Every license under this Act shall be granted by the Collector of Land Revenue of the District or place in which the person requiring such license shall carry on his Art, Trade, or Profession, or shall deal in Tobacco, or by such other Officer as the local Government shall appoint or authorize in that behalf. If the person requiring such license shall carry on his Art, Trade, or Profession, or shall deal in Tobacco in more than one District or place, the license shall be granted by the Collector or other authorized Officer of the District or place in which the chief office or place of business of such person is situate ; but if the Art, Trade, or Profession, or the dealing in tobacco so carried on at any one District or place be distinct from and not necessarily from its nature connected with that carried on at any other District or place by the same person, then a separate license shall be chargeable in each District or place in which such separate Art, Trade, or Profession, or such dealing in Tobacco is so carried on."

SIR BARTLE FRERE moved the omission of the above Section and the substitution of the following :—

"The Collector of Land Revenue or other person specially appointed by him for the purpose shall grant licenses under this Act to persons dealing in tobacco, and shall grant certificates of payment for Duties under Schedule A."

THE CHAIRMAN said, he thought there should be some check in the power proposed to be vested in Collectors by this Section. The words "or other person specially appointed by him for the purpose" seemed to him to be too general. He thought that the agency for working the Act should be defined in the Bill.

MR. BEADON said, he thought it would answer the object of his Honorable friend opposite (Sir Bartle Frere) to restrict the power of granting licenses to Collectors, because, under that denomination it could be exercised by all officers having the powers of a Collector. As the amended Section stood, a Collector might appoint any one he pleased ; and though he might not appoint an unfit person, yet the existence of such a power would be likely to give rise to false personation and fraud. There were analogous provisions in our Revenue law under which powers given to Collectors might be exercised by any Assistant or Deputy Collector having the requisite authority ; and in the North-Western Provinces and the Punjab such powers were generally exercised by Tehseeldars. He (Mr. Beadon) did not think that the power of granting licenses under this Act should be entrusted to any one but an officer appointed by the Government.

SIR BARTLE FRERE said, he had no objection to omit the words "or other person specially appointed by him

for the purpose." He introduced them only to meet an objection of the Honorable Member for Bengal, regarding the distance that some persons would be obliged to travel before they could reach the Collectorate for the purpose of taking out a license.

MR. ERSKINE said that the amended Section, if he had rightly heard it, placed on the local Government the responsibility of providing adequate agency for the collection of Duties and issue of licenses. He thought this general discretion might safely be entrusted to those Governments, who need not be restricted in their selection of agents.

After some further discussion, the Section was amended as follows on the motion of the Chairman :—

"Licenses to deal in tobacco under this Act shall be granted by the Collector of Land Revenue, or by the Deputy Collector or person exercising the full powers of a Collector, or by any person specially authorized by Government to grant such licenses."

SIR BARTLE FRERE moved the omission of Sections V to VIII, and the substitution of the following :—

"Every person to whom such license shall be granted shall, for every year during the continuance of such license, pay the rate of Duty specified therein, not exceeding the rate mentioned in Schedule B, and such Duty shall be payable in advance half yearly or in such other manner as shall be specified in the license.

"Every license granted under this Act shall have effect and continue in force from the day of the date thereof, until the same shall be surrendered by the grantee to the Collector or such other Officer as aforesaid, or until the expiration of the current year of such license, in which he shall have received notice from the Collector calling upon him to renew such license at a different rate of Duty. No surrender of a license shall release the grantee from liability to pay any Duty that would otherwise be payable during the current year.

"If any person who has taken out a license under this Act shall die during any portion of the year in respect of which he has paid Duty in advance, no further Duty shall be payable under the license, unless the dealing shall be carried on by his representative, or by some person to whom the license has been transferred. Whenever any person shall die or assign his trade or dealing, in respect of which a license has been granted his representative, or any person to whom the license shall be transferred, shall be liable to pay the Duty mentioned in the license for the period during which such representative or other person shall carry on the dealing under the same, in the same manner as if the license had originally been granted to him."

THE CHAIRMAN moved that the consideration of the remaining Sections be postponed till after the consideration of the Schedules.

Schedule A provided as follows :—

"Every artisan ...	1	Re. yearly.
Every petty dealer or trade of Class II ..	2	" "
Every retail dealer or trader of Class I, or small manufacturer for retail only ..	4	" "
Every wholesale dealer, trader, banker, manufacturer for wholesale or retail, and every member of a profession ..	10	" "

SIR BARTLE FRERE moved the omission of the above Schedule, and the substitution of the following :—

"Every person who shall exercise any art, trade, or dealing for gain or profit for any period between the 1st of January in one year and the 1st of January in the succeeding year, shall pay for such period—

If belonging to Class I ...	4	Rupees.
" " " II ..	2	"
" " " III ..	1	"

THE CHAIRMAN said, he would have preferred a uniform rate of Duty in the form of a Poll Tax, but he would be content with the following classification of trades and specification of rates :—

"Bankers and Money-lenders .	3	Rupees
Shop-keepers ..	2	"
All other cases ..	1	"

After some discussion upon the above proposition, and also respecting the reduction of the maximum rate from four to three Rupees, the former being the minimum rate under the Income Tax Act, the Schedule was passed, with the substitution of the figure 3 for the figure 4.

Schedule B provided as follows :—

"Every petty dealer in Tobacco in a village ..	Rs.	yearly.
Every other dealer in Tobacco in a village ..	"	"

Every petty dealer in Tobacco in a Town	..	Rs. yearly.
Every other dealer in Tobacco in a Town	..	" "

SIR BARTLE FRERE moved the omission of the above Schedule, and the substitution of the following:—

"Rates of fees to be paid for their licenses by traders in Tobacco—

				Per Annum.
Wholesale dealers,	1st	class	..	Rs. 100
Ditto ditto,	2nd	"	..	" 50
Retail dealers,	1st	"	..	" 24
Ditto ditto	2nd	"	..	" 12
Ditto ditto	3rd	"	..	" 4
Ditto ditto	4th	"	..	" 2

In doing so, he said he proposed, with regard to this Schedule, to lay down some rules which he hoped would be found satisfactory by the Council If, on recommittal, it should be considered desirable to import them into the Bill, he would have no objection to their introduction.

MR. SCONCE said, he entertained strong objections to the proposed Schedule, both as regards the classification and the rates. There was nothing to show how the classes had been divided into different grades. The general rule, as laid down in the Interpretation Clause, was, that whoever sold Tobacco in quantities of one maund or upwards, in any one transaction, was a wholesale dealer, and whoever sold less than a maund in any one transaction, was a retail dealer. Often possibly a wholesale dealer would sell in the course of a year less than a retail dealer, and yet the former was to be charged a much higher rate of Duty than the latter, not with reference to the quantity of Tobacco sold by each in the year, but simply because he was a wholesale dealer, whilst the latter sold by retail. His next objection was that the law did not specify why certain wholesale dealers should pay a hundred Rupees a year, and others fifty Rupees; he did not like this sort of guess-work. In the same way, if we came to the lower rates in detail, he could not see how the Collector was to go to work and charge one retail dealer twenty-four Rupees, another twelve Rupees, a third four Rupees, and a fourth two Rupees. He had already referred to the definite principles by which License Duties were regulated in England, and with the permission of the Council he would revert to it. In the case of Tobacco, mere dealers were all charged alike 5 shillings, while manufacturers were charged according to the total quantity manufactured: thus a manufacturer who did not dispose of more than 20,000 pounds weight, or 250 maunds, paid £5; another for a quantity not exceeding 500 maunds, was charged £10, and so on; and certainly it seemed to him that the Duties chargeable under this Bill should be regulated by an equally intelligible principle. Then there was another matter of very great importance. We had had no information from the Honorable Gentleman as to the effect which the levy of these Duties would have upon the price of Tobacco. Supposing a wholesale dealer sold only ten maunds, as might possibly be the case, and you took a hundred Rupees from him, that would be at the rate of ten Rupees a maund. If he sold fifty maunds, and you took a hundred Rupees from him, that would be at the rate of two Rupees a maund. In like manner as to retail dealers. Suppose also that a retail dealer assessed at twenty-four Rupees sold 24 maunds, the Duty would be one Rupee a maund, and thus it might be that by adding together both the wholesale and retail Duties, the price of Tobacco would be raised by three Rupees a maund. Now as the Council well knew, the first project of a Tobacco Tax had been given up from the apprehension that it would bear too heavily upon the people, and it was a very material point to be assured now, that the present proposal would not also have the same injurious operation.

SIR BARTLE FRERE said, he thought the Honorable Member for Bengal had made some mistake with regard to the definition of wholesale dealers. The Bill did not propose to define how the dealers under every head were to be classified. As he (Sir Bartle Frere) had already said, the

Rules would provide for all this, and any Honorable Member would be at liberty to move any amendment he pleased before the third reading. He also promised to give all the information as to the effect which this Bill was likely to have upon the price of Tobacco. As to wholesale dealers, he (Sir Bartle Frere) proposed one hundred Rupees as the maximum, and two Rupees as the minimum rate for retail dealers. The rates were considerably below what had been proposed by all the Officers who had been consulted. He hoped that the Honorable Gentl man would take his (Sir Bartle Frere's) assurance that, before he was called upon to vote for the third reading, he should have all the information there might be before the Government, and then if he should think that the rates were too many or too few, or too high or too low, he (Sir Bartle Frer) would be prepared to argue the matter with him.

THE CHAIRMAN said, he thought it was hardly fair to expect him to vote in favor of the Schedule subject to certain information which the Honorable Member proposed to lay before the Council. He (the Chairman) would rather postpone the consideration of this Schedule until that information could be submitted to the Council.

MR. SCONCE said, he was sorry he could not accept the assurance of the Honorable Member opposite (Sir Bartle Frere). He would put it to the Council whether any one of the objections which he had taken to the Schedule had been answered. 1st, as to the distinction between wholesale and retail dealers; 2nd, as to the several grades of wholesale and retail dealers; and lastly, as to the effect which the tax would have on the price of Tobacco.

SIR BARTLE FRERE said, he was anxious to have the Bill in such a form as would admit of its being printed. As he had already more than once said, if this Bill were passed by the Committee t -day, no Honorable Gentleman would be pledged to the third reading of it. He was therefore sorry that he could not concur in the proposition of postponing the consideration of this Schedule.

THE CHAIRMAN said, he did not see how the Council could vote in support of the Schedule without the information referred to. If the printing of the Bill was the only matter for consideration, the Schedule might be printed without the insertion of any rates, blanks being left for them.

MR. HARINGTON said, as he understood it was the intention of the Honorable Member of Council who had assumed the charge of this Bill, to move, as soon as the Bill should have passed through a Committee of the whole Council, that it be republished for general information, he thought that the best course they could pursue was to adopt the rates of Duty proposed by the Government for both wholesale and retail dealers in Tobacco, on the understanding that Honorable Members, by now voting for those rates, were not to be considered as absolutely pledged to them, but that if the opinions or representations which might be elicited by the proposed republication of the Bill should show that they were too high, any Honorable Member would be at liberty to vote for such reduced rates as might be deemed equitable and proper. They had the assurance of the Honorable Member of Council, who was in charge of the Bill, that the rates of Duty proposed in it on licenses to sell Tobacco were very much below the rates recommended by the local Governments or some of them, and he thought that, if they adopted for the present the rates specified in Schedule B, as it now stood, and allowed the Bill to be republished with those rates inserted in it, with the understanding which he had mentioned as to any future alteration which might be found necessary, no one would have any just cause to complain. It appeared to him that it was very desirable that the Bill should be before the public in a complete form with as little delay as possible. He might mention that as yet so much of the Bill as related to the licensing of the sale of Tobacco had never been published, and the public had, therefore, enjoyed no opportunity

of saying any thing on the subject of that part of the Bill.

MR. FORBES said, he thought that this advantage would be gained by the publication of the Schedule with the rates now proposed, that persons would know as to what their opinion was called for, whereas, if we were to leave blanks for the figures in the Schedule, the sole object we had in view in publishing the Bill would be defeated. He saw no objection to the Schedule being passed with the figures inserted, on the understanding that no Honorable Member was pledged to the figures as they now stood, but that any Honorable Member, who might, after the republication of the Bill, think the rates too high, should have an opportunity of proposing a reduction of them. The object of republishing the Bill was to afford the dealers in Tobacco an opportunity of making any representation they pleased to the Council upon the mode in which it was proposed to tax them, and the rates of the proposed tax, and also to enable the officers of Government in the Mofussil, who were able from their position to give practically useful opinions, an opportunity of affording information to the Council on the subject now before them. But if we witheld all information of how we intended to deal with the very matter on which we professed to ask for the opinion of the public, it appeared to him that we should defeat our own end in republishing the Bill, and shut out the very information which it was our avowed object to obtain.

THE CHAIRMAN said, he did not understand that it was the intention of the Honorable Member (Sir Bartle Frere) to republish the Bill. Still he did not see why we should pledge ourselves that these were proper rates, when we did not know if they were so or not. Nor did he see the necessity for such haste. When we saw the papers, and had before us the information promised by the Honorable Member, we should then be in a position to come to a decision on the subject. For his own part he should prefer not voting in the dark. He should therefore move that the consideration of this Schedule be postponed until after the information referred to by the Honorable Member were laid before the Council.

The Council then divided as follows, on the question for postponing the consideration of the Schedule :—

Ayes 2.	*Noes* 5.
Mr. Sconce.	Mr. Erskine.
The Chairman.	Mr. Forbes.
	Mr. Harington.
	Mr. Beadon.
	Sir Bartle Frere.

So the Motion was negatived, and the Schedule was then put and agreed to.

Sections IX to XII were passed after verbal amendments.

Section XIII was passed as it stood.

SIR BARTLE FRERE moved the introduction of the following new Sections after Section XIII :—

"All Duties payable under this Act shall be collected by the Collector of Land Revenue or by such other person, not being an Officer of Police, as he shall appoint, subject to such general rules as shall be laid down by the local Government, for his guidance in that respect."

"Every person, who shall refuse to pay on demand made upon him or left at his usual place of business or residence any Duty which shall then be payable under this Act, shall be liable to pay a penalty not exceeding three times the amount of the Duty payable which shall be recoverable in the same manner as arrears of Duty under Act XXXII of 1860."

"No person assessed for the payment of any Duty under Act XXXII of 1860 shall be liable to pay any Duty under this Act, except for dealing in Tobacco."

"Every person, who shall collect any Duties under this Act, shall keep an account, specifying the amounts received by him, the names of the persons from whom the same shall be received, and the Art, Trade, or Dealing exercised by such persons, and shall annually or at such other times as shall be ordered by the Collector or by the local Government make a return thereof to the Collector."

"The Government may authorize the Collector to allow to any person employed in collecting Duties under this Act and for keeping the account mentioned in the foregoing Section, such commission not exceeding 3 per cent. on the amount collected, as the Collector may think fit."

The Sections were severally agreed to.

THE CHAIRMAN moved the introduction of the following new Section after the above :—

"All the provisions contained in Part XIX of Act XXXII of 1860, so far as they are applicable, shall have the same effect as if the same had been repeated and enacted in this Act."

Agreed to.

Section XIV was passed aft r an amendment.

SIR BARTLE FRERE moved to substitute the word "dealing" for the word "business" wherever it occurred.

Agreed to.

Section XV provided as follows :—

"Nothing in this Act shall be deemed to apply to any ryot or cultivator of land, or to any agricultural menial or village servant."

Amendments were proposed and carried, which made the Section run as follows :—

"Nothing in this Act shall be deemed to apply to any cultivator of land selling the produce of the land upon which he cultivates, so as to require any such person to pay a Duty or to take out a license under this Act."

Sections XVI to XVIII were passed as they stood.

Section XIX (the Interpretation Clause) was passed with the addition of the followin :—

"The term 'wholesale dealer' used in Schedule B of this Act means one who sells Tobacco in quantities of one maund or upwards in any one transaction.

"A retail dealer in Tobacco is one who sells Tobacco in quantities less than one maund.

"No wholesale dealer in Tobacco shall, in virtue of his wholesale license, be exempt from penalties for selling by retail without a retail license."

THE CHAIRMAN said, he proposed to add a Section to the effect that the Act should not continue in force for more than five years. When the Bill was introduced by the Right Honorable Gentleman, it was proposed that this should be a perpetual Act, and it was quite a different measure then. But it was now proposed to make it a supplemental Act to the Income Tax, the duration of which had been limited to five years, and therefore this Bill should not be allowed to continue in force for a longer period.

MR. FORBES suggested that some provision should be made in the Section now proposed by the Honorable and learned Vice-President with regard to the Regulations which were to be repealed by Section I of the Bill; otherwise when this Act expired five years hence, those laws would again come into force. He did not think that the Mohturfa Tax in Madras and the House Tax in Tanjore, which were now about to be abolished, should be revived on the expiration of this Act.

THE CHAIRMAN entirely concurred in opinion as to the inexpediency of renewing those taxes, and moved the addition of the following Section :—

"No part of this Act, except Section I, shall continue in force beyond the 31st December 1865. Provided that this Act and the said Duties shall not then cease with respect to any assessment which ought to have been made before the said last mentioned day, but which shall not then have been made and completed; nor with respect to any of the said Duties which shall have been assessed, and shall then remain unpaid; nor with respect to any penalty before then incurred; nor with respect to any offence of which any person shall have been guilty before that day; nor shall the said Duties cease in any case where the assessments for the preceding year shall not have been completed before the said 31st day of December 1865. And that all the powers and provisions of this Act shall continue in force for making and completing all such assessments as afore-aid, and for levying and recovering the Duties so assessed or to be assessed, and all arrears of such Duties and for the suing for, adjudging, and recovering any penalty which shall have been or may be incurred, and for the punishment of any offence, of which any person shall have been guilty before that day.

Agreed to.

The Preamble and Title were passed after amendments; and the Council having resumed its sitting, the Bill was reported.

SIR BARTLE FRERE then moved that the Bill be republished for general information, and that it be brought up for reconsideration aft r six weeks.

Agreed to.

The Council adjourned.

Saturday, September 8, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,
Hon'ble C. Beadon,
H. B. Harington, Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.,
C. J. Erskine, Esq., and
Hon'ble Sir C. R. M. Jackson.

SIR CHARLES JACKSON was duly sworn, and took his seat as a Legislative Councillor of the Council of India.

INCOME TAX.

THE CLERK presented a Petition to the Council from Merchants, Bankers, and other Inhabitants of Singapore praying for the exemption of the Straits Settlement from the Income Tax.

RECOVERY OF RENTS (BENGAL).

THE CLERK also presented a Petition of Ameer Mullick, praying for an alteration of Section XXX of Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal).

MR. SCONCE moved that the Petition be printed.

Agreed to.

INCOME TAX.

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement, with an extract from the resolutions of a special Meeting of the Singapore Chamber of Commerce against the Income Tax.

ARTICLES OF WAR.

THE CLERK also reported that he had received a communication from the Military Department, forwarding copies of a Bill to amend the Articles of War and of a note thereon.

FINANCES OF INDIA.

SIR BARTLE FRERE said, before entering on the Orders of the Day, he desired to say a few words in explanation of the circumstances under which a Bill had been brought into Parliament, for the purpose of enabling the Secretary of State in England to raise a loan of three millions on account of the Government of India. He (Sir Bartle Frere) wished to make this explanation, because an impression had got abroad that there was some inconsistency between this proceeding and the statement made by Mr. Wilson in February last. Mr. Wilson, in describing the financial state of the country at that time, and in anticipating what would be the effect of the measures proposed to be introduced in the next eighteen months, gave an estimate of the balances at the end of the financial year; and it had been supposed that what he then stated contained a sort of pledge that there should be no more loans raised for the current expenses of Government. He (Sir Bartle Frere) would, with the permission of the Council, read what Mr. Wilson said at that time. It would be found at page 147 of the proceedings of February last. Mr. Wilson said:—

"Sir, I have been asked, as I said before, what result we expect from our increased taxes and from our reduced expenditure. We hope in the course of time to make both ends meet; our aim of course is to produce an equilibrium; but I must remind you that sometime, the greater part of a year, must elapse before our taxes can become fruitful, and before our reductions of expenditure and reformed systems can begin to tell. In the mean time, however, our balances in the exchequer are large, larger than they have been since 1853, and larger by upwards of six millions than on the 30th April last year. In India and at Home I expect our balances, on the 30th April next, will be about £10,600,000 against £13,398,000 last year, and, therefore, even though our new taxes should be dilatory in coming in, and the reductions of expenditure some time before they are felt, I trust we may be able to go on without any further resort to borrowing, at least for a time; and I hope that, if we continue to be blessed with peace when these measures are carried into full effect, we may be saved the

necessity of having resort so constantly to the money market, as unfortunately in the past has been the case."

Now, in considering how far Mr. Wilson's anticipations had been fulfilled, it was right to consider how far circumstances had occurred different from those which Mr. Wilson had a right to anticipate. In the first place, there had been a delay, owing to causes to which he (Sir Bartle Frere) need not now refer, of at least a quarter of a year in the new taxes being brought into effect. Similar causes had, to some extent, occasioned delay in carrying out reductions of expenditure in some departments. He trusted that, before many weeks passed, it would be in the power of the Government to publish some of the results which had attended the labors of the Military Finance Commission, and although one of the Members of that Commission, Colonel Jamieson, had been obliged to proceed to England, he had left so able a coadjutor, Colonel Balfour, that he (Sir Bartle Frere) had no doubt that the results of their labors would prove as valuable as had been anticipated when the Commission was first appointed. In all these matters it generally happened that the time occupied in obtaining a result was longer than was first anticipated. But in the case of the Finance Commission, he was sure it would not be found that there had been any dilatoriness either on the part of the Commission in offering suggestions, or of the Administrative Government in giving them effect. So also with regard to the Police It was not until some time after Mr. Wilson spoke in February last that active measures were taken to bring this branch of the expenditure under searching enquiry. In this respect also he (Sir Bartle Frere) felt confident that the exertions of the Commission lately appointed, and whose first report to Government might shortly be expected, would fully justify the appointment of that able Commission. It was not to be expected that any reductions consequent on such measures could be carried out by a stroke of the pen. It took a long time before the expenditure of a great Department like that of the Police, when it had once become excessive, could be pressed down within reasonable limits; and, as Mr. Wilson pointed out, the difficulty increased with every reduction effected. So also with regard to Railway expenditure, he (Sir Bartle Frere) believed that, when our late colleague spoke in February last, materials were not at hand for estimating the Railway expenditure for 1860-61, but the amount expended in the year 1859-60 was somewhere about five and a half millions, whereas the amount which the Railway Companies had estimated they would be able to spend in the current season 1860-61 was 7¾ millions. In this branch of the expenditure, it was of course the interest of Government that there should, if possible, be no check so as to get the return expected from the outlay as soon as possible. It appeared from a Parliamentary Return of the 12th of July 1860, which he held in his hand, that in favor of some Railways there would be a considerable surplus of paid-up capital, while there were other undertakings with respect to which it appeared that the balance in hand to meet current expenses would be inconveniently small. In such a case as that, the obvious course was to require the shareholders to pay up any amount of capital which they might be under engagement to do. But it was, of course, very much dependent upon the state of the money market at the time whether it would be advisable to force them to do this, or whether it would not be better to await some more favorable time to let them go into the money market. He hoped it would not be necessary for any Railways to look to Government for assistance in that way; but, looking to the state of the balances, and to the estimate of expenditure for the current year so much in excess of the year preceding, it would be necessary to have a considerable reserve at hand to meet possible demands, and this was a contingency which could not have been foreseen in February last.

There was another element which Mr. Wilson did not see at the time he spoke, and that was the state of the seasons in Madras and the North-Western Provinces. It was impossible to say at this time what their state would ultimately prove to be. There was ground for hope that it would improve, but there was still reason to fear that it might not be so, and this uncertainty of course affected trade generally. Another element of uncertainty, arising from the state of political affairs in Europe, must be taken into consideration. All these things of course affected the amount of balances which it was desirable to have in hand. When the seasons were fair and the political horizon was clear, it might be possible to get on with a smaller balance in the Treasury than it would be prudent to reserve when the seasons were unfavorable, and the political horizon at all overclouded, and when there was a general contraction of trade. He simply adverted to these facts, not as showing that Mr. Wilson's calculations required any alteration, but as proving simply this, that the amount of balances as estimated by him was that which he might reasonably have trusted when everything was going on as it then was, and as he had a right to hope it might continue. It would be seen, by referring to what Mr. Wilson said, that in April 1859 the balances in India and at Home amounted to £13,398,000, and he expected the balances of the following year, that is, in April last, to amount to £19,600,000; and under the then existing circumstances, beginning the year with this amount of balance in hand, Mr. Wilson might reasonably hope that, notwithstanding the serious difference between the current income and expenditure which he then described, it might be possible to get through the year 1860-61 without borrowing, though the balance in hand at the end of the financial year, when the balances were naturally lowest, might fall below the sum at which they stood at the end of 1858-59. But under different circumstances it would be prudent to have a much larger amount of balance in hand. There was a difference of opinion as to the amount of balance which it was prudent or necessary to have in the hands of the Government of India. Some authorities thought that twelve or fourteen millions were little enough; some that we might safely go as low as ten millions. But even under such circumstances as Mr. Wilson had anticipated, we should have been running very close to the lowest amount of balance which it would be prudent to retain by the end of the financial year 1860-61. Supposing, however, that it was found necessary to borrow, how was the Treasury to be replenished? It was obviously expedient that the Secretary of State should obtain the necessary power for raising a loan in England. He (Sir Bartle Frere) believed that these were the circumstances under which the Secretary of State had taken this power, and he (Sir Bartle Frere) trusted that what he had stated to the Council would be sufficient to show that Mr. Wilson was not over sanguine in the estimate which he formed in February last, and that there was nothing in the proceeding of the Secretary of State inconsistent in the least degree with the hope which Mr. Wilson then held out.

Mr. SCONCE said, he did not enter the Council this morning with the expectation of troubling them on a question of finance, nor was it his purpose to take any exception to the general explanation just made to the Council by the Honorable Member (Sir Bartle Frere). But there was one part of that statement which was wholly unexpected by him (Mr. Sconce). He alluded to that part of the statement which grounded the necessity for opening the new loan on the insufficient means supplied by the Railway Companies for carrying on their own works. He was certainly not prepared, from any of the explanations which had been received from the lamented Mr. Wilson who had so recently led the Financial discussions in this Council, that, in consequence of the Railway Companies being unable to supply the requisite funds for carrying on their works, the Government

would be obliged to incur the risk of making advances to them for the purpose. As he understood, 5½ millions was to have been the limit, but it now appeared that the actual expenditure had been 7¾ millions. He had not hitherto been informed in this Council that these advances formed any basis of account in the Financial statements of the Government. Some months ago he had alluded in the Council to the obscure and unsatisfactory information possessed by them with respect to these Railway accounts. It seemed to him that, if the Council were to give their assent to or opinion upon any advances to Railways, it was very necessary that we should have thorough information as to the mode in which the Railway accounts were kept both here and in England; and whether the disbursements of each Railway Company were in advance of its receipts or the receipts in advance of the disbursements. He understood that the money received by the Railway Companies at home was paid into the hands of the Secretary of State and used for public purposes in England, while a corresponding credit was given to the Railway Companies here to meet their disbursements. He would wish to know therefore whether virtually there was a surplus or a deficit in the Treasuries of the various Companies. But whatever might be the mode in which the accounts were kept, and whatever the results of those accounts, he thought we should have at the earliest possible opportunity distinct cash accounts, so that we might know whether the charges were in advance of the receipts or the receipts in advance of the charges. His Honorable friend opposite had not told us what were the Companies whose bankrupt state was disclosed by the returns to which he had referred. We ought to know the Companies to which allusion was made, and if we were at all to give our assent to the financial measures of Government that arose from a deficit in Railway supplies, we should have an opportunity of expressing our opinion whether it was expedient to adopt what he believed to be the entirely new proposal to allow the Public Treasury to make advances to the Railway Companies which should themselves have failed to find the necessary funds. One explanation given by the Honorable Member was that it would be injurious to force the Railway Companies into the money market at an unseasonable time, and that therefore the Secretary of State was to raise a loan in order to give those Companies the assistance that they needed. In either case however a resort was had to the money market. He could not say, nor he apprehended could his Honorable friend at this time say, what arguments the Secretary of State might have used to support the application made by him to Parliament for a new loan. It might be that the inability of the Railway Companies to provide the funds for their own works might have been adduced by the Secretary of State among the reasons urged by him, and possibly Parliament might have thought fit to accept that explanation, but for himself, he though he might be wrong, he was not prepared to sanction so unexpected a proposition

SIR BARTLE FRERE said, he thought the Honorable Gentleman would find all the information which he required in the Parliamentary paper to which he had already referred of the 12th July last, and would find there not only the names of all the guaranteed Railway Companies, but the amounts at which their balances stood at the end of the financial year. He (Sir Bartle Frere) would observe, however, that he was not aware at present that the necessity to which he had alluded as possible had arisen, and that it was very possible it never might arise, but it was one for which it would not be prudent to be unprepared. With regard to ordinary Joint Stock Companies, it was of course the natural result that they must either provide the funds required for their works or stop them; but with regard to guaranteed Companies the case was different. Government had guaranteed 5 per cent interest on the capital expended, and in the event of such a Company, after laying out large amounts, being unable to raise any sum

required to complete their undertaking, it was impossible for the Government to sit still and say that they would allow them to draw 5 per cent. interest for doing nothing, while their works were suspended. He did not mean to say in what way it might be necessary for Government to come forward, but he only meant to say that it would be impossible for Government to treat such a case of a Company which had been guaranteed as they would that of a Company to which no guarantee had been given. Though the present estimates were not complete and showed only a comparatively small possible deficit on the part of some Companies, even that would be a contingency which it would be unwise to neglect in estimating the balances required for the current year's service.

THE VICE-PRESIDENT wished to ask the Honorable Member if there was not some Clause in the contracts entered into between the Government and the Railway Companies, which compelled the latter within a certain time to provide the capital with which the works were to be executed, the penalty for non-fulfilment being the forfeiture to Government of the Railway and its works.

SIR BARTLE FRERE said, the powers were ample to the Government to compel the Companies to provide the capital to go on with the works or to take the works into their own hands, but that made little difference in the bearing of the question on the Government. Supposing the Government were to interfere in such a case and to take the Railway into their own hands for the purpose of completing and working it on their own account, that would only increase the liabilities of the Government.

MR. SCONCE asked if any Company had expressed their inability to go on, and called on Government to provide the required funds?

SIR BARTLE FRERE said, he was not aware of such a case. After providing for an expenditure in the current season of £540,000, they were still considerably within the limit which the Railway Companies expected to be able to spend, which, as he had stated, amounted to £781,000.

THE VICE PRESIDENT said, he understood the Honorable Member to say that the Secretary of State was making arrangements in England for raising a loan in order to assist Railway Companies with funds for carrying on their works, and to prevent them from going into the money market at an unfavorable time. Now he (the Vice-President) thought it would be very unwise on the part of Government, if they had the power of forfeiting the Railway, to hold out to the Railway Companies any hope that Government would make the necessary advances if the latter were unable to raise the required capital for carrying on the works. The proper course for Government to pursue was to forfeit the Railway in terms of the contract, if the Railway Company would not raise the money they were bound to do. It did not follow that, if the Government forfeited the Railway, they ought to go on with the works on their own account. They might make them over to others who would be glad enough to carry them on. He thought it very unsafe for Government to hold out any inducement of the kind referred to, to the Railway Companies. As remarked by the Honorable Member for Bengal, the Secretary of State would have to go into the money market at an unfavorable time just as much as the Railway Companies.

SIR BARTLE FRERE said, he was very much obliged to the Honorable and learned Vice-President for giving him the opportunity of explaining that it was not the intention of Government to pledge itself as to the course to be pursued in the event of the case he had anticipated arising. His (Sir Bartle Frere's) desire was to point out that, at the time Mr. Wilson spoke, he had not and could not have this information as to the amount that Government might be asked to provide for Railway expenditure, and as a part of the liability he pointed out that some Companies might be behind hand in providing the capital required to complete their undertakings, and that this was a contingency for which

Government must be prepared But he wished to state nothing which could possibly be construed as pledging Government to advance money to Railway Companies in that condition. He stated the demands of the Railway expenditure as forming a very important element in the consideration of the sum which must be kept in hand, and with every hope that such a contingency would not arise, it was one that it would not be prudent to be unprepared for. He was very much obliged to the Honorable and learned Vice-President and to the Honorable Member for Bengal for having enabled him to correct what would otherwise have been a very serious misapprehension of what he had said.

EMIGRATION (FRENCH COLONIES).

MR. BEADON said that, pursuant to the notice which he gave last Saturday, he rose to move the first reading of a Bill "to authorize and regulate the Emigration of Native Laborers to the French Colonies." The immediate occasion for this measure was explained in a Despatch from the Secretary of State of the 22nd June last, which he would read to the Council. It was as follows:—

TO HIS EXCELLENCY THE RIGHT HON'BLE THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

MY LORD,—Since the last correspondence with your Government on the subject of Coolie Emigration from India to the French Colonies, Her Majesty's Government have been in communication from time to time with the Government of the Emperor of the French as to the terms and conditions on which such emigration should be conducted, and I now forward for your information, a copy of the Convention which has been agreed to for the purpose of giving effect to the proposed scheme of emigration.

The accompanying letter from Lord John Russell to my address will show how it is that the signature of the Convention on behalf of Her Majesty's Government must be delayed till your Government shall have been duly empowered by the Indian Legislature to bring the scheme into operation, and as it is important that the Convention should be signed at the earliest possible period, I have to request that a Bill may without delay be introduced into the Legislative Council, conferring the requisite authority on your Government and the earliest intimation of its being passed into law may be made to me.

You will not fail to include in the Bill the proviso specified in the concluding passage of the letter of Lord John Russell.

I have, &c.,
C. WOOD.

The letter from Lord John Russell, to which allusion was made in that Despatch was the following. After referring to his correspondence with Lord Cowley, Lord John Russell observed that:—

"The French Government considered that the Emperor could not publish his proposed declaration for putting an end to the Regis Contract as long as any uncertainty prevailed with respect to the course which might be taken by the Legislative Council of India, whose consent it now appears is required to enable the proposed Convention for the emigration of Indian Coolies to the French Colonies to be carried into effect.

It is impossible to deny that the objection of the French Government is well founded. But, on the other hand, the publication of the declaration is essential to the signature of the Convention.

It would be very much to be regretted that an arrangement which is so well calculated to put an end to a revival of the African Slave Trade, however the operations may in terms be disguised, should fall through on what I trust is little more than a point of form, and I therefore would suggest to you that the Legislative Council of India should at once be moved to pass a law to carry into effect the proposed Convention, with a proviso that the law is not to come into operation until after the conclusion of the Convention, and until the time at which the Convention itself is to take effect shall have arrived."

The correspondence between Lord John Russell and Lord Cowley, which he (Mr. Beadon) need not read at length, referred to the negociations on the subject of permitting the emigration of laborers from India to the French Colonies. With the same Despatch was forwarded the draft of a general Convention which had been agreed upon, but which would not be signed until the Legislative Council should approve of the terms proposed, and a law should be passed to give effect to them. There was a second Despatch from the Secretary of State, dated the 24th July, founded on a representation of the great want of laborers in the Island of Bourbon, and directing that authority might be given for the commencement of emigra-

tion thither as soon as the Act should be passed without waiting for the formal completion of the Convention. Immediately following upon that came a third Despatch from the Secretary of State, forwarding a copy of a special Convention relating to emigration to Bourbon alone, which the French Government had concluded with Her Majesty's Government, on the understanding that an Act would be passed by this Legislature carrying it into effect.

He (Mr. Beadon) thought that there were grave objections to allowing emigration to Bourbon or any other French Colony, without the security for the proper treatment of the emigrants that the execution of a formal Convention would afford; but as a special Convention for Bourbon had now been signed, there would be no objection, if the Act were passed, to give it immediate effect as regards emigration to that Colony.

The question of authorizing the emigration of Coolies to the French Colonies was first brought to notice in 1851 by the French Authorities at Mauritius, who found that the supply of labor at that Colony was quite inadequate to its wants, and asked the Government of India to allow the emigration to that Colony of Native Laborers from India on the same terms as to our Colonies, promising to make the same provision for the protection of the emigrants as existed in Mauritius. The proposition was in the first instance discouraged because, although the provisions which the French Authorities proposed to make, seemed in all respects sufficient, still it was felt that there was no security that the arrangements would be carried out as promised, and that the Government of India had no authority to enforce their fulfilment. In the year 1852, however, a decree was passed by the French Government by which considerable improvements were effected in the arrangements made for the protection of the Coolies at Bourbon, and an application was made to the British Government to legalize the emigration of Native laborers from British India to the Colony. Thereupon a reference was made to the Government of India asking its opinion as to whether emigration might be allowed to the French Colonies. Enquiries were made and the opinions of the local Governments were called for and received by the Government of India At about the same time a gentleman of considerable scientific attainments, and well known to Hon-rable Members of this Council, Dr. Mouat, happening to go down to Bourbon, was desired by the Government of Bengal to make enquiries and report whether the decree of the French Government was really and *bonâ fide* carried out. In May 1852 Dr. Mouat submitted an elaborate report in which he gave upon the whole a very favorable view of the condition of the Indian laborers then on the Island, and recommended that their emigration thither from British Indian Ports should be allowed. With the permission of the Council, he (Mr. Beadon) would read a few extracts from the report so as to satisfy the Council that there was reasonable ground for expecting that the provisions of the proposed law, if passed, would be carried into effect. Speaking of the Decree, Dr. Mouat said—

"I was told by those well acquainted with the subject that the provisions of this Act are the basis of the measures at present in force regarding the Coolies, and that all subsequent modifications have been entirely in favor of the laborers, so anxious are the authorities of the Colony to protect and encourage them."

In illustration of this, Dr. Mouat went on to say—

'The following is, as far as I have been able to ascertain, the general plan of proceeding now adopted.

The Coolies are collected by a special agent at the expense of a ship owner, and are brought before the French authorities at Pondicherry or Karrical, by whom they are separately examined as to their transmission to Bourbon with their own free will and consent.

The engagement which each enters into to work in Bourbon for three, four, or five years is entered on duplicate papers.

The conditions of salary, which vary according to the supposed quality, skill, and pretensions of the individual, with his scale of rations, are all inscribed,

The act of engagement also indicates the advances which are made to the Coolies

before their departure, as well as the legal deductions authorised to enable them to return to India or to subsist on the expiration of their engagement, should they have been improvident or careless while in employ. These sums are deposited in the custody of the special Syndic or Immigrant Agent. As a general rule their wages are calculated to begin from the first fortnight of their arrival in the Colony,

The Controller invariably covenants to furnish the Coolies with food and Medical attendance in sickness, however protracted it may be. The daily wages are, however, not paid for such periods as the laborer is unable to work.

He also covenants, in the event of the Coolie running away, or failing to fulfil his part of the contract from vagrancy, to deduct two days' wages for each day of an unauthorized absence without leave.

If a Coolie is convicted by a legal tribunal and sentenced to fine for civil offences, the amount is deducted from his savings, the proprietor of the Coolie being compelled to advance the sum in anticipation, whatever may be its amount. The expense of punishing Coolies is only borne by the state in Criminal cases.

On boardship each Coolie is allowed a certain amount of space, and he is victualled according to a fixed scale; I am not acquainted with the particulars of these provisions. In regard to the former I conjecture the allowance of space to be about one-third less than that sanctioned for the same object from the Port of Calcutta, but this is a mere surmise. I have no exact data on the subject beyond having been informed, and possibly erroneously, that vessels of 500 and 600 tons from Pondicherry, carry as many Coolies as ships of 800 or 900 tons leaving Calcutta.

Immediately on the arrival of a Cooly ship in the Roadstead of St. Denis, its sanitary condition is enquired into before the laborers are disembarked.

In the event of any contagious disorder existing on board, they are sent to perform quarantine at a Lazaretto in the ravine of St. Jacques.

When they are disembarked at St. Denis itself, they are sent to perform a simple quarantine in a very large establishment situated at the foot of the mountains at the distance of about two miles from the Town.

There or at the houses of certain Medical Officers selected by the Government they are all vaccinated.

During this time their written contracts have been presented to and examined by the proper authorities and made over to the Syndic.

As soon they are released from quarantine the Syndic identifies each of them according to the descriptive roll furnished. The Coolie is required to state his age, name, and caste, his father's name and the place of his birth, and any particular marks of identification present in the individual are noted.

The whole of these particulars are copied from the general Register into a book containing the copy of his engagement, and of the rules and laws relating to him, and this book is made over to the Coolie himself to enable him at all times to know his duty and obligations, and claim the fulfilment of all rights to which he is entitled. The laborer is compelled to carry this with him wherever he goes as a permit of residence and species of ticket of leave, as well as to afford him protection from arrest or molestation.

The stipulated engagement entered into with the ship-owner at Pondicherry arms him with authority to transfer his right and title to the landed proprietor in Bourbon requiring laborers, the terms of cession being a matter of personal bargain between them. The transfer requires subsequently to be legalized by the Syndic who enters it in the general Register, and inscribes it in the Coolie's book also.

It is this circumstance, and the fluctuations in the price of labor that raises or depresses the value of the contracts, which has given rise to the erroneous impression in India of the Coolies being sold as slaves.

The actual and average prices of the purchase of the contracts of different gangs of Coolies are published in the local journals, without a statement of the circumstances in which the sales have been effected, because these are well known on the spot. Hence the misapprehension at a distance.

The working hours of the Coolies are from six in the morning to six in the evening with two hours interval for bathing, eating, and rest. Their food is cooked by one of their own caste, who has no other occupation.

No corporal punishment of any description is allowed to be inflicted by the landholders on the Coolies. All offences of every description require to be reported to a Justice of the Peace, who can inflict punishment according to the gravity of the offence, to the extent of fifteen days' imprisonment with labor on the roads and in the public works. If they turn out incorrigible vagabonds, the ultimate punishment is transportation to the Coromandel Coast.

In Criminal matters they are liable to the provisions of the Code Napoleon.

My impression certainly is that they are treated with the greatest kindness and consideration by the Government, that their punishments are lighter than those of the free Negro population for the same offences, probably because they are physically less capable of bearing up against harsh treatment, and that every means is taken to render them contented with their lot, and to induce them to settle on the Island.

The number of women who accompany the Coolies is about in the proportion of ten per cent. As in the Mauritius, they seemed to me to be of a very low order, and are probably seldom, if ever, the wives of the men they accompany.

I heard the number of Indian Laborers in the Island very variously estimated. Some numbered them as high as 30,000, others rated them lower than 20,000. Between 23 and

24,000 is, I believe, not far from the actual number at present in the Colony. At least 50,000 are necessary to supply the full wants of the Island."

In a subsequent part of his Report Dr. Mouat observed :—

"There can be no doubt, I think, that India possesses a vast surplus population, more than the West India Islands and those in the Southern Division of the Indian Ocean can possibly absorb as laborers, and that, when carefully managed, as I know them from personal observation to be both in Bourbon and the Mauritius, they are far better off than in their own homes.

They leave India full of prejudices, utterly ignorant, and as low in the scale of humanity as it is possible to imagine such beings to be.

They acquire in their transmarine experience habits of thought and independence, a knowledge of improved means of cultivation, a taste for a higher order of amusements, a greater pride of personal appearance, and an approach to manliness of character, rarely if ever seen in the same class in their native villages. They are loosed from the trammels of caste and abject submission to priest-craft which renders them so unprofitable a race at home. They are removed from the blighting influence and extortionate exaction of Native Zemindars and other depressing agencies, and protected almost to an injurious extent in the exaction of their rights.

The spread of such men throughout the villages of Hindoostan cannot fail to be beneficial, and in my humble estimation ought to be encouraged to the utmost limit of which it is susceptible.

They bring back wealth, vigor of body, and such enlargement of mind as can be acquired in their sphere of life.

I did not perceive that the French Government is making any attempt to educate the children of the Coolies born in Bourbon. There was in the Island at the time of my visit a young priest, who had formerly been a Student of the Medical College in Calcutta, of the Bonda caste, then named Sreenauth Sen. He was a young man of powerful intellect and irreproachable character, and was converted to Christianity by the Nuns at that time attached to the Fever Hospital. He is said now to be entirely devoted to ministering to the Bourbon Coolies."

That Report came before the Government of India together with the reports of all the local Governments, among which was one from the then Governor of Bengal, Lord Dalhousie, who was strongly in favor of allowing the proposed emigration to take place. The Government of India too was disposed to give the scheme its favor and support but there were some parts of the decree to which objection was taken as not providing sufficiently for the protection of the Coolies. The following were the points on which objection was made :—

(1). Insufficient space on boardship.
(2). No provision for a Surgeon on boardship.
(3). Inadequate provision as to clothing on boardship.
(4). The same as to water and provisions.
(5). Objection to allowing emigration to take place from the French Ports in India
(6). Objection to allow emigration to the French Colonies in the West Indies or to Guiana.
(7). If emigration were allowed from French Ports, absence of any arrangement for a British Protector at such Ports.

Now it would be found that the Convention provided for all those points except one, and that was the provision of a proper supply of water on boardship. It was a most important and necessary provision, and he (Mr. Beadon) presumed it was omitted in the Convention simply because it was thought that it would be supplied for in the Act of the Indian Legislature.

The reports in question were submitted to the Court of Directors, and by them made over to Her Majesty's Government, and since then the matter had formed the subject of negociation between the French and English Governments. In the meantime the French Government not being able to obtain from India the amount of labor required in Bourbon and their other Colonies, had resorted to a system of what they called free, but what he (Mr. Beadon) would be disposed to call forced labor, which had much of the character of a Slave Trade carried on between those Colonies and the Coast of Africa. A contract was entered into between the French Government and certain Merchants at Marseilles, whereby the latter agreed and were empowered to transport a large number of laborers from Africa to the French Colonies: under this contract ships were chartered to go and collect Negroes on the African Coast. These were then conveyed to Zanzibar or some other Port, and there required to declare before

some authority that they engaged to proceed to Bourbon of their own free will. It was very easy to see that a traffic of this kind must directly give rise to most of the evils of a Slave Trade. Accordingly kidnapping was revived, and atrocities of the worst description were committed by slave hunters and others in pursuit of their object. This state of things had been represented by the Government of Her Majesty to the French Government, and some restriction was, in consequence, placed on the traffic. But the final result of the remonstrances of the British Government had been the present Convention, under which, if duly carried out, it might be expected that this horrible traffic might be put a stop to by allowing the emigration of Native Laborers from India. It was proposed that the emigration should be sanctioned under proper regulations which had already been laid down in the Convention and were supplemented in the Bill, and by which he (Mr. Beadon) felt confident that the object aimed at would be fully attained. The Coolies would be properly protected in this country, before they were sent on boardship, as well as when on boardship Their interests would be taken care of in the Colony, and they would be permitted to return to India after five years' of industrial residence, a free passage being given to them.

There was no reason to apprehend that free laborers once taken to Bourbon had ever been ill-treated there, or reduced to slavery; on the contrary, there was everything to show that they were well treated there. The only fear was that they might be kidnapped and taken to the Colony under a false representation of what they were to expect there, and that they might be ill-treated on the voyage, and not permitted to return to their country.

As regards the Government of India, it was evident that it would not under this Convention have the same security for the good treatment of the Coolies in the French Colonies as our own Colonies, and the difference was this. With regard to our own Colonies, no emigration was allowed to take place to any Colony unless the Government was satisfied that laws were passed in that Colony which would afford security for the good treatment of the Coolies, whereas in the case of emigrants to French Colonies, there was nothing to rely upon but this Convention. In one Clause of the Convention, it was said that the laborers would be dealt with according to the laws passed for Martinique; but as to what the laws of Martinique on this behalf were, we had no information. But this condition seemed to have satisfied Her Majesty's Government, and we must take it on trust that Her Majesty's Government had the means of practically enforcing it through the agency of British Consuls.

The principle of the Bill was to legalize the terms of the Convention and to apply to the French Colonies all such provisions of the law relating to emigration to our Colonies as were applicable. The Convention provided explicitly that the Coolies during their residence in any French Colonies would be under the protection of the British Consular Authorities, and as the legalization of free emigration would induce the French Government to put an entire stop to the Slave Trade, and at the same time open a field for the profitable employment of the laboring population of India, he (Mr. Beadon) thought that the Council might proceed to legislate in the matter and to remove all local impediment, as if they had the same security for the good treatment of the laborers in the French Colonies as in our own. No one would deny, as an abstract proposition, that the laborers of India had a right to carry their labor to the best market, and that the Government should interfere only to guard them against misrepresentation and fraud in their engagements here, to protect them on the voyage, and to ensure them the enjoyment of their just rights during the term of their residence in a Foreign country. He (Mr. Beadon) thought it particularly desirable that the proposed law should be passed at the present time, as it might afford employment for many starving people, and relieve the sufferings which had

arisen, and were still further threatened in consequence of the drought and scarcity with which the North-Western Provinces had been visited during the past season.'

With these observations he begged to move the first reading of the Bill

SIR BARTLE FRERE seconded the Motion, which was put and carried, and the Bill was read a first time.

MR BEADON then gave notice that he would next Saturday move the second reading of the Bill.

VACATIONS (CIVIL COURTS)

MR. SCONCE moved the second reading of the Bill "to amend the law relating to Vacations in the Civil Courts within the Presidency of Fort William in Bengal."

The Motion was carried and the Bill read a second time

STAMP DUTIES.

MR. BEADON moved the second reading of the Bill "to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties)" and said that he would reserve any further observations that he had to make upon it until the Council went into Committee on the Bill.

The Motion was carried and the Bill read a second time.

MR. BEADON moved that the Standing Orders be suspended to enable him to carry the Bill through its remaining stages forthwith

SIR BARTLE FRERE seconded the Motion which was put and carried.

MR. BEADON moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Section I was passed after amendments.

Section II proposed to authorize the use of One Anna Postage Stamps in certain cases.

MR BEADON proposed the omission of this Section, and said that he had ascertained since the last meeting that there would be a sufficient number of One Anna adhesive Stamps.

Agreed to.

Mr Beadon

Sections III to V were severally passed after amendments.

MR. BEADON proposed the introduction of the following new Section, the necessity for which arose out of a clerical error in the present Act :

"Sections XXI and XXII of Act XXXVI of 1860 are repealed, and the following new Sections shall be read as Sections XXI and XXII of the said Act —

'XXI Every vendor of Stamps shall write on the back of each Stamp which he sells, except adhesive Stamps and Stamps used for receipts or for Bills of Exchange, Promissory Notes, Drafts or other Orders for money, Bankers' agreements for loans, or Bills of lading, the date of issue, the name of the person to whom it is issued, and his own ordinary signature on pain of a fine not exceeding one hundred Rupees'

'XXII Any vendor who shall knowingly write a false name or date on the back of any Stamp which he is required to endorse under the foregoing Section shall be punished by a fine not exceeding five hundred Rupees, or imprisonment not exceeding three months, or both."

Agreed to.

MR BEADON moved that the following new Section be introduced after the above :—

"Article 28 of Schedule A of the said Act is repealed and the following words shall be read as Article 28 of the said Schedule of the said Act —

'28 Engagements to cultivate, produce, provide, or deliver any article of commerce in consideration of advance made	Shall be charged on the amount advanced at the rate of Bonds."

Agreed to.

MR. BEADON said, he had no other amendments to propose, but he thought it right to bring to the notice of the Committee that the Bengal Chamber of Commerce had suggested an amendment in Article 44, Schedule A Now he apprehended that, under the Act as it stood, a Policy of Insurance was liable to be stamped eight annas, and, if made in duplicate, each copy was liable to be stamped eight annas. What the Chamber of Commerce required was that the Duty on each of two copies should be four annas, and that the triplicate if, executed, should be exempt. He (Mr Beadon) thought however that the Duty on Policies of Insurance,

which was almost the lowest in the whole Schedule, and which was the same as under the old law, should continue unaltered.

Sections VI and VII and the Preamble and Title were passed as they stood, and the Council having resumed its sitting, the Bill was reported.

MR BEADON moved that the Bill be read a third time and passed.

The Motion was carried and the Bill read a third time.

MR BEADON moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent

Agreed to.

PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Bill

THE CHAIRMAN asked permission to go back to Section 3 Chapter V (punishment for abetment if the act abetted be committed in consequence and where no express provision was made for its punishment), and proposed a trifling amendment which was carried.

Chapter VII (of offences relating to the Army and Navy) being read by the Chairman—

MR BEADON asked if this was not one of the Chapters which referred to flogging.

THE CHAIRMAN explained that the course he proposed to pursue with respect to flogging was this. As flogging was not one of the punishments provided for by the Code as published, but had since the year 1857 been inserted in the Code as a new punishment, he did not think that the Council could pass the Code with the retention of flogging, without a republication of the Code; and this could not conveniently be done if the Code was to come into operation from the 1st of May next, as time was necessary to be allowed for the Code being properly translated and studied He intended therefore to propose that the Code should stand as it was without the punishment of flogging, and to call for the opinions of the local Officers respecting the expediency or otherwise of its adoption.

MR SCONCE said, it might be a ground for postponing the consideration of the question that, at Bombay, Brahmins were exempted from the punishment of flogging.

MR ERSKINE said he believed that the statement just made by the Honorable Member for Bengal required some correction It was true that one Section of the Bombay Code provided that persons exempted by a prior Section of that Code from imprisonment with hard labor should not be sentenced to flogging; but at the same time that prior Section exempted Brahmins from hard labor only in cases which were not so atrocious as to prevent the infliction of such a punishment on such persons in those cases from shocking the sentiments of the native community. He believed he was correct in saying that the limitation as to flogging had been practically enforced only in the same restricted sense, that is to say in regard to offences by Brahmins which were not grave enough to prevent the feelings of the community from being generally shocked by the infliction of that punishment

MR BEADON said with regard to the punishment of flogging, he thought that as the Committee had already affirmed it as a general principle that flogging was to be one of the punishments under the Code, the better course would be not to undo what had already been done, but to postpone the consideration of the question as to the offences to which flogging was applicable, until the opinions of the local Officers were received.

THE CHAIRMAN said, only two courses were open to us, namely either to provide to what offences flogging ought to be applied and republish the Bill, or to omit flogging from the Code and provide for it by a separate enactment after consulting the local Officers on the subject. For the reasons already given by him, he inclined in favor of the latter course.

SIR BARTLE FRERE said that he would much prefer the last course suggested by the Honorable and learned Vice-President. It had been supposed that he (Sir Bartle Frere) and other gentlemen who objected to the omission of this punishment from the Code did so on the grounds that they had approved of the punishment in itself and desired to retain it permanently as a general punishment. Nothing could be farther from the truth. He was convinced he spoke the sentiments of every one in that Council when he said he was most anxious to see the punishment at once entirely and for ever abolished. His objection to its immediate abolition rested mainly on his belief that to many classes and in many parts of the country imprisonment or any other punishment which could be substituted for flogging was in reality the more inhuman of the two. There were vast numbers of wild tribes—men who never lived within four walls and who pined and died when removed from their Native jungles or deserts. To these men imprisonment for even a very short period and with the lightest possible discipline and best treatment was simply a sentence of lingering but certain death. His own observation on this subject was confined to the wild tribes of Western India; and when he spoke last on the subject, and stated his belief that the same reasoning would apply to the jungle tribes in this Presidency, his Honorable friend the Member for Bengal expressed his doubt of the fact. At that time his (Sir Bartle Frere's) belief as regarded Bengal was founded on a remark regarding the mortality in the Alipore jail. Since then he had referred to that most able and experienced Officer, Dr. Mount, who confirmed, on the most unmistakeable evidence, his (Sir Bartle Frere's) previous impression. There were hundreds of thousands of savages and uncivilized tribes on all the borders of Bengal, in Beerbhoom and Bhaugulpoor, in Assam and on the Burmese frontier, among whom the mortality of prisoners shut up in jail was enormous, as compared with the mortality of other classes. It was the simple confinement that killed them, and no device had yet been found by which the mortality of these savages when shut up in prison could be kept within such limits as were usual with other classes. Now what he felt was that, however barbarous the punishment of flogging, the imprisonment of such men, when you knew that death would be the probable result, was far more cruel and unjustifiable. But while for cases such as these and a few others he (Sir Bartle Frere) thought that flogging must necessarily be retained as a punishment for many years to come, he would be glad to see it omitted from a Code such as that on which they were engaged, which was intended to be a complete, scientific, and permanent work, and a standard of general penal jurisprudence for this time and this country. Believing that you could not at present dispense with flogging without incurring the necessity for resort to expedients which, though they appeared more humane, were really more cruel to vast masses of our Indian subjects, he would be glad to see the punishment omitted from the Code as a barbarous and obsolete punishment, and placed in an Act by itself as if it were only tolerated as a temporary and exceptional expedient applicable to particular classes and conditions. The course therefore which seemed to him best was that suggested by the Honorable and learned Vice-President, to refer the subject for the consideration and report of the local authorities, and to permit by separate enactment flogging in those cases only where the reports might show it was necessary to retain it for such reasons as he had described.

THE CHAIRMAN said, the Code was not to come into force until the 1st of May next, and if we introduced flogging into the Code as a new punishment, it would be necessary to republish the Code. He did not think it right, after objections had been made by some Members of this Council, that we should pass the Code by the votes of a majority of the Council, without republishing the Code and calling for the opinions of the local Officers. He therefore proposed to pass this Code without that punish-

ment, and to ask the Governor-General in Council to call for the opinions of the local Officers, and if those Officers or the majority of them should be in favor of the punishment of flogging, to provide for it by a separate measure. The difficulty of republishing the Code was this, that it was absolutely necessary to allow time for the Code being translated and studied before it became law, and if it was to be republished, he did not think that it could be brought into force from the 1st of May; whereas it might be dealt with as a separate measure, to take effect from the same time with the Code.

MR. BEADON said, he quite agreed with the Honorable and learned Chairman as to what was required to be done, though he differed from him as to the mode of doing it. It struck him that the most advisable course was to provide for flogging by a general Clause, and leave the consideration of that Clause until the end of the Bill. In the meantime the Governor-General in Council could obtain the opinions of the local Officers, and then we could determine for what, if any, crimes the punishment of flogging was applicable.

THE CHAIRMAN said, his own opinion was that flogging was not required so far as the Supreme Courts were concerned. They already had the power to inflict that punishment under the 9th Geo. IV, c. 74. He did not recollect, ever since he had been in India, of its having been inflicted in the Supreme Court, and he did not think that it was a punishment which he should ever inflict. With regard to the Mofussil, however, he believed the Officers were generally in favor of flogging as a punishment, and he had no objection therefore to its adoption, as regards certain offences.

MR. SCONCE said, he was not against flogging altogether, but it was a matter which required some deliberation as to the extent to which it should be allowed. He referred to a statement which recently appeared in the public prints, as to the extent to which flogging was carried in Oude, and which seemed to justify the apprehensions he expressed sometime ago, that men became callous to the infliction of corporal punishment and could not hold their hands when once commenced. It was stated in the newspaper to which he referred, that flogging was imposed to the extent of hundred stripes which were suffered by successive instalments when the prisoner had recovered from the effects of the injury inflicted.

MR FORBES said, with reference to the suggestion of the Honorable Member opposite (Mr. Beadon) that a decision on the present question should be postponed, and that the opinions of all local Officers upon it should be obtained by a reference to each local Government, as had been done when the question of the introduction of Oaths into the Civil Procedure Code was under consideration, he (Mr. Forbes) wished to ask that Honorable Gentleman within what time he anticipated that the replies of the local Officers would be received. The reference on the Oaths question had been made in consequence of a Bill brought in by him (Mr. Forbes), and he was quite sure that he was within the truth when he said that the replies to the reference made were not received in less than six months. If therefore the present question were postponed, and the Penal Code was not to be passed until a settlement of the question of flogging were arrived at after the receipt by the Council of the opinions of all local Officers, it would be vain to expect that the Code should pass within the next six months, and consequently vain to anticipate that it would be in operation, as was intended, on the 1st of May next.

SIR BARTLE FRERE said, he still prefered the course proposed by the Honorable and learned Chairman, and was inclined to think that the question should be treated as an exceptional one and disposed of by a separate enactment. He thought, however, that the introduction of the measure should be made a matter of duty and not of choice, and that we should not throw upon any Members the disagreeable duty of bringing in

the Bill as a voluntary measure. If the Council were to charge a particular Member with the duty of drawing up and bringing in the Bill, he (Sir Bartle Frere) was sure that no Honorable Member would object to undertake the duty.

MR SCONCE suggested the appointment of a Select Commi tee to prepare a Bill.

MR. ERSKINE said, he was disposed to concur in much that had fallen from the Honorable Member opposite (Sir Bartle Frere). The punishment of flogging must always be an exceptional punishment under a civilized Government. It could be applicable only to special classes of cases, which ought gradually to become fewer and fewer day by day. There was reason therefore to doubt whether it should find place in a great Code like this from which it had been deliberately excluded by the framers—a scientific Code intended to be general and permanent in its application. He would prefer that a special law should be passed to amend and consolidate the different existing Regulations on the subject of flogging, and if there were any reasonable hope that a mature and well considered Bill of this kind could be prepared in time to admit of its being brought into operation simultaneously with the Code, he would join his Honorable friend opposite in supporting that course.

MR. HARINGTON said, it seemed to him that they would gain nothing by delay, and that they were in as good a position now for determining the question as to whether flogging should or should not be one of the punishments which might be awarded under the Code as they would be a month or six weeks hence—nor could he see any advantage in consulting the local Governments on the subject. Members representing most of those Governments were present, and they could probably speak very decidedly as to the views entertained by the local authorities in the parts of the country represented by them upon this particular question. He was satisfied that they might safely assume that the majority of the local authorities were in favor of flogging forming one of the ordinary punishments of the Code, and he thought, therefore, they had better come to a decision at once upon the question, and not defer the consideration of it for an indefinite period. If it was intended that flogging should be one of the punishments which the Criminal Courts might inflict, it seemed to him that the Code should say so, and that the punishment should not be left to be prescribed by a separate law, the introduction of which would be a matter of uncertainty. They were preparing a Penal Code for all India, and that Code would clearly not be complete, or be what it professed to be, namely, a general Penal Code if it omitted a punishment which might be administered under some other law not now in existence, but which might be passed hereafter. He gathered that the majority of Honorable Members present were in favor of flogging as one of the punishments to be inflicted under the Code, but that some doubts existed as to the offences on a conviction of which it should be awarded. This was however a minor difficulty, which he thought might easily be got over without a reference to the local Governments. They knew what offences were punishable with flogging under the Madras and Bombay Regulations, and under the Regulations of the Bengal Code which were abrogated by Regulation II of that Code. These Regulations would serve to some extent as a guide to them, and he thought the selection of the offences might be left to a Select Committee who might be required to make their report before the Committee of the whole Council had finished their revision of the Code. He would only add that the Committee had already determined that flogging should be included amongst the punishments authorized by the Code, though it was of course competent to them to go back and reconsider the question.

MR. SCONCE said, the difficulty was not as to the selection of the offences to which flogging should be made applicable, but the necessity of the

republication of the Bill, if that punishment were now to be adopted. He had already adverted to a peculiarity in the Bombay Presidency with regard to the punishment of flogging. He would now notice a peculiarity in the Madras Presidency in relation to the same matter. In Madras, some years ago, flogging used to be inflicted by a rattan. Subsequently, however, the cat-o-nine-tails was substituted for the rattan, and consequently 150 lashes with the cat-o-nine-tails were equal to 30 with the rattan.

MR. FORBES said, it appeared to him that the question of flogging was one which might very properly be referred by the Council to a Select Committee with instructions to consider to what offences the punishment of flogging should apply, and to prepare and submit to the Council a Bill to give effect to any course they might recommend for adoption. As the Committee would act under the instructions of the Council, its Members would not justly incur any of that odium which the Honorable Gentleman on his left (Sir Bartle Frere) appeared to apprehend would attach to any individual Member who might introduce a Bill to make corporal punishment a part of the Criminal Law, and if, notwithstanding this, obloquy should be cast on the Committee, its Members must accept it as one of the apparently inevitable consequences of entering public life. As the Honorable and learned Chairman was well known to be constantly occupied by his arduous and responsible duties as Chief Justice of Bengal, it could not be expected that he should form part of the Committee, but he (Mr. Forbes) was confident that, if they should require it, the Committee might rely on receiving from the Honorable and learned Gentleman that assistance which the Honorable and learned Gentleman was at all times so willing to afford. The Members of the Executive Government, too, might very fairly claim exemption from serving on the Committee in consideration of their many other duties; but if the Council would be willing to entrust the duty to the nominated Members of the Council, he was sure that they would all cheerfully give their attention to the subject, and endeavour to the best of their ability to carry out the Council's instructions.

THE CHAIRMAN acquiesced in the suggestion and expressed his intention, as soon as the Council rose from Committee, to move the appointment of the Committee as proposed.

Section 1 was passed after verbal amendments.

Sections 2 to 8 were passed as they stood.

Section 9 was passed after verbal amendments.

Section 10 was passed as it stood.

Section 1 Chapter VIII (of offences against the Public Tranquillity) was passed after amendments.

Sections 2 to 8 were passed as they stood.

Section 9 (providing for cumulative punishment) was omitted.

Section 10 was passed as it stood.

MR. SCONCE moved the introduction of the following new Section after the above, and said that it would embrace all who promoted or connived at the employment of latyals, and render them punishable as principals :—

"Whoever hires, engages, or employs, or promotes or connives at the hiring, engagement, or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly or himself had committed such offence."

Agreed to.

Sections 11 to 13 were passed as they stood.

Section 14 provided as follows :—

"Whenever an unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held or such riot is committed, shall be punishable with fine not exceeding one thousand rupees, if he or his agents or servants, knowing of such assembly or riot or having reason to believe that it is about to take place, do not give

to the Principal Officer of the nearest Police station the earliest notice in his or their power of such assembly or riot, or of its being about to take place, and do not use all lawful means in his or their power to prevent such riot or assembly from taking place, or for dispersing or suppressing it."

THE CHAIRMAN moved the omission of the above Section and the substitution of the following :—

"Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand Rupees if he or his agent or manager, knowing that such offence is being or has been committed or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal Officer at the nearest Police station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and in the event of its taking place, do not use all lawful means to disperse or suppress the riot or unlawful assembly."

Agreed to.

MR. SCONCE moved the introduction of two new Sections after the above. The first would render a principal punishable for the criminal neglect of his local Manager, and the second would apply the same punishment to Managers for criminal neglect. The proposed Sections were as follows :—

"Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land or in the subject of any dispute which gave rise to the riot or who has accepted or derived any benefit therefrom, such person shall be punishable with fine if he and his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place and for suppressing and dispersing the same."

"Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the Agent or Manager of such person shall be punishable with fine, if such Agent or Manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same."

The Sections were severally agreed to.

Section 15 provided as follows :—

"Whoever hires or engages, or offers or attempts to hire or engage, any person to do or assist in doing any of the acts specified in Clause I of this Chapter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both; and whoever hires or engages, or offers or attempts to hire, any person to go armed with any deadly weapon, or with any thing which used as a weapon of offence is likely to cause death, for the purpose of doing or assisting in doing any such act, or knowing it to be likely that the person so hired or any person assisting him will go so armed or use such weapon in doing or assisting in doing such act, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

MR. SCONCE moved the omission of the above Section and the substitution of the following Section :—

"Whoever harbours, receives, or assembles in any house or premises in his occupation or charge or under his control any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term that may extend to six months, or with fine, or with both."

Agreed to.

Sections 16 to 18 were passed as they stood.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

RAILWAYS.

MR. ERSKINE moved that a communication from the Government of Bombay forwarding the draft of an Act for regulating the working of locomotives in the Railway lines whilst

under construction, be laid upon the table and referred to the Select Committee on the Bill "to amend Act XVIII of 1854 (relating to Railways in India.)"

Agreed to.

MR. FORBES moved that Mr Erskine be added to the Select Committee on the above Bill.

Agreed to.

REGISTRATION OF ASSURANCES.

MR. FORBES moved that Mr. Erskine be added to the Select Committee on the Bill "to provide for the Registration of Assurances."

Agreed to.

PARSEES.

SIR BARTLE FRERE moved that Mr. Erskine be added to the Select Committee on the Petition from the Parsees of Bombay with the draft of a Code of laws adapted to the Parsee Community.

Agreed to.

VACATIONS (CIVIL COURTS).

MR. SCONCE moved that the Bill "to amend the law relating to vacations in the Civil Courts within the Presidency of Fort William in Bengal," be referred to a Select Committee consisting of Mr. Beadon, Mr. Harington, and the Mover.

Agreed to.

FLOGGING.

THE VICE-PRESIDENT moved that a Select Committee be appointed, consisting of Mr. Harington, Mr. Forbes, Mr. Sconce, and Mr. Erskine, to consider and report on the punishment of flogging, and to prepare such Bill as they might consider necessary.

Agreed to.

The Council adjourned at half past 5 o'clock on the Motion of Sir Bartle Frere, till Tuesday the 11th instant, at 7 o'clock in the morning.

Tuesday Morning, September 11, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble C. Beadon,	C. J. Erskine, Esq,
H B. Harington, Esq,	and
H. Forbes, Esq.,	Hon'ble Sir C. R.
A. Sconce, Esq.,	M. Jackson.

PENAL CODE.

THE Order of the Day being read for the adjourned Committee of the whole Council on the "Indian Penal Code," the Council accordingly resolved itself into a Committee for the further consideration of the Bill.

The Sections of Chapter IX (of offences by or relating to public servants) were passed as they stood, except Section 12 (providing for cumulative punishment) which was omitted.

MR. ERSKINE said, he saw no provision in this Chapter for the offence of offering or attempting to bribe a Judicial Officer.

THE CHAIRMAN said, he thought such a case would come under the head of abetment. At any rate he did not think it right to make both the parties, that is the briber and the person bribed, liable to punishment, for then this difficulty would arise, that neither would come forward and inform

MR. ERSKINE said, he apprehended that such a difficulty would only arise in the case of a bribe being accepted.

THE CHAIRMAN said, the point was fully considered by the Select Committee, who thought it unnecessary to introduce any provision on the subject. The following was what the Law Commissioners said in the matter :—

"One important question still remains to be considered. We are of opinion that we have provided sufficient punishment for the public servant who receives a bribe. But it may be doubted whether we have provided sufficient punishment for the person who offers it. The person who, without any demand express or implied on the part of a public servant, volunteers an offer of a bribe, and induces that public servant to accept it, will be punishable under the General Rule contained in

Clause 88 as an instigator. But the person who complies with a demand, however signified, on the part of a public servant, cannot be considered as guilty of instigating that public servant to receive a bribe. We do not propose that such a person shall be liable to any punishment, and, as this omission may possibly appear censurable to many persons, we are desirous to explain our reasons.

In all states of society, the receiving of a bribe is a bad action, and may properly be made punishable. But whether the giving of a bribe ought or ought not to be punished is a question which does not admit of a short and general answer. There are countries in which the giver of a bribe ought to be more severely punished than the receiver. There are countries, on the other hand, in which the giving of a bribe may be what it is not desirable to visit with any punishment. In a country situated like England, the giver of a bribe is generally far more deserving of punishment then the receiver. The giver is generally the tempter, the receiver is the tempted. The giver is generally rich, powerful, well educated, the receiver needy and ignorant The giver is under no apprehension of suffering any injury if he refuses to give. It is not by fear, but by ambition that he is generally induced to part with his money. Such a person is a proper subject of punishment. But there are countries where the case is widely different—where men give bribes to Magistrates from exactly the same feeling which leads them to give their purses to robbers, or to pay ransom to pirates—where men give bribes because no man can, without a bribe, obtain common justice. In such countries we think, that the giving of bribes is not a proper subject of punishment. It would be as absurd, in such a state of society, to reproach the giver of a bribe with corrupting the virtue of public servants, as it would be to say that the traveller who delivers his money when a pistol is held to his breast, corrupts the virtue of the highwayman.

We would by no means be understood to say that India, under the British Government, is in a state answering to this last description. Still we fear that it is undeniable that corruption does prevail to a great extent among the lower classes of public functionaries, that the power which those functionaries possess renders them formidable to the body of the people, that in the great majority of cases the receiver of the bribe is really the tempter, and that the giver of the bribe is really acting in self-defence.

Under these circumstances we are strongly of opinion that it would be unjust and cruel to punish the giving of a bribe, in any case in which it could not be proved that the giver had really by his instigations corrupted the virtue of a public servant who, unless temptation had been put in his way, would have acted uprightly."

MR. ERSKINE said, he would give the matter further consideration, and if necessary, on some future occasion, propose a Clause on the subject.

SIR CHARLES JACKSON said, there was another matter, for which he thought there should be some punishment. When a case was decided in a Court of Justice, it was a common practice for the officials of the Court to go and ask the successful party for a present. He had occasion himself, not long ago, to dismiss one of his peons for such a cause.

THE CHAIRMAN said, perhaps the Honorable Member for Bombay would consider that point also, and provide for it, if necessary, in any amendment which he might propose to the Council.

MR. ERSKINE signified assent.

SIR CHARLES JACKSON said, he would also endeavor to frame a Clause to that effect.

Section 1, Chapter X (of contempts of the lawful authority of public servants) was passed as it stood.

Section 2 was passed after a verbal amendment.

Section 3 (providing for cumulative punishment) was omitted

Sections 4 to 7 were passed as they stood.

Section 8 prescribed the punishment for a person refusing to bind himself by an oath to state the truth, when required by a public servant legally authorized in that behalf.

MR. ERSKINE asked, if there was any provision in the Code, exempting a Quaker or any other person from the obligation of taking an oath.

THE CHAIRMAN said, in England there was a special law on the subject, which was applicable in India so far as the Supreme Courts were concerned. He did not know what was the law in the Mofussil.

MR. BEADON said, he supposed that the same law would be applicable in the Mofussil, if the party was a British subject.

THE CHAIRMAN said, he was in favor of the abolition of oaths altogether. But the Section now before the Council merely provided for the refusal to take an oath so long as the law required oaths to be taken.

The Section was then passed as it stood.

Sections 9 and 10 were passed as they stood.

Section 11 was passed after a verbal amendment.

Section 12 was passed as it stood.

Section 13 was passed after a verbal amendment.

Section 14 (providing for cumulative punishment) was omitted.

Section 15 was passed as it stood.

Section 16 (providing for cumulative punishment) was omitted.

Sections 17 and 18 were severally passed as they stood.

Section 19 (providing for cumulative punishment) was omitted.

Sections 20 and 21 were passed as they stood.

Section 22 (providing for cumulative punishment) was omitted.

Sections 23 and 24 were passed as they stood.

Section 1, Chapter XI (of false evidence and offences against public justice) was passed after verbal amendments.

Section 2 was passed after a verbal amendment.

Section 3 was passed after the omission of the words "touching a point material to the result of that proceeding or gives" on the motion of THE CHAIRMAN.

Sections 4 and 5 were passed as they stood.

Section 6 was passed after a verbal amendment.

Sections 7 and 8 were passed as they stood.

Sections 9 and 10 were passed after verbal amendments.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council was adjourned at 10 o'clock, on the Motion of Mr. Beadon, till Thursday morning at 7 o'clock.

Thursday. Morning, Sept. 13, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President* in the Chair.

Hon'ble C. Beadon,	C. J. Erskine, Esq., and
H. B. Harington, Esq.,	Hon'ble Sir C. R. M. Jackson.
H. Forbes, Esq.,	
A. Sconce, Esq.,	

STAMP DUTIES.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XXXVI of 1860."

PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Code.

MR. SCONCE said, he was afraid he might be irregular in now referring to the discussion which took place last Tuesday on Section 1 Chapter XI of the Code, but he thought that there was some material doubt as to the definition given in that Section. The doubt he felt was with reference to the amendment proposed by the Select Committee in the original Section, the reasons for which had not been clearly explained. The words to which he alluded were those which in the definition of false evidence required the statement made by a witness to be in itself false. Now it seemed to him (Mr. Sconce) that a witness going into Court was required to speak of his own knowledge what he knew, and he did so on his own responsibility. It might be that another person brought into Court might depose to a fact of which the first witness knew nothing: but the same fact, though thus truly spoken of, would be false as regards the first witness, who knew nothing of it. A statement made might be false evidence, even if in itself true. It seemed to him, if he rightly understood the effect of the Section, that, if any person made a statement which was not in itself false, he could not be convicted of perjury. He thought it most important to look to the bearing of statements as evidence; and if the evidence as given was false, the truth of the statement could not excuse the perjury. In illustration of his meaning, he would suppose a case of murder or homicide, in which a witness deposed that, as he was returning from the market, he saw A strike B with a club and fell him. Now it might be true that A did kill B, but the witness was not present, and did not see what he said he saw. If we supposed a second witness to have seen A strike the blow, the first witness, in-

fluenced by whatever motives, might have undertaken to corroborate his evidence: but while the one witness spoke the truth, the other, though the statement made by him was in itself true, seemed none the less to have committed perjury. If his (Mr. Sconce's) impression as to the meaning of the Section were correct, it seemed to him that this would be an encouragement to concoct evidence, than which they had no greater source of difficulty to contend with in the judicial investigations of this country.

There was another matter which he also wished to notice We had agreed to strike out the provision which required the point, if falsely deposed, to be material to the result of the proceeding. He did not wish to re-open that question, but in adopting that change, it might be advisable to introduce some words which would define more broadly the character of the offence—something that would, if possible, be a guide to the Courts in restraining them from convicting persons for perjury upon an immaterial issue, and in leading them to convict only when false evidence was wilfully and corruptly given

THE CHAIRMAN said, he would endeavor as far as he could to answer the question of the Honorable Member as to the alteration which had taken place in the definition of false evidence and to show that the Section, as passed, was correct. The Section as it stood in the Original Code defined false evidence as follows:—

"Whoever * * states for truth that which he knows or believes to be false, or which he does not know or in good faith believe to be true, is said to give false evidence.

According to the best of his recollection, when this Section came under the consideration of the Select Committee, an objection was made that a man might state that which was false, but which he knew or believed to be true, and that would not therefore come under the definition. Suppose a witness were asked by a Judge—"you have heard what that man (another witness) has said; do you think his statement to be true?", and he replied "Yes, I have heard what he has said, but his statement is false." Here he stated that which was false regarding that which he knew to be true. To meet such a case the Section was altered by the Select Committee as follows:—

"Whoever * * makes any statement which is false and which he either knows or believes to be false, or does not know or believe to be true &c."

But the latter part of this definition was not accurate, because a man might state what was false, and yet believe it to be true, but he could not state what was false, *knowing* it to be true. That was rather stating a thing that was true and not false. Therefore in Committee of the whole Council the words "know or" were omitted, and the definition was made to run as follows:—

"Whoever * * makes any statement which is false and which he either knows or believes to be false, or does not believe to be true &c."

Suppose A to state on oath that he believed that a deed was executed by B, and it turned out that the deed was not executed by B; would you punish A for perjury? Would you punish a man for perjury upon a statement of his belief? The question simply was whether, at the time A made his statement, he believed it to be true or not. If he did not, then he must have stated what was false.

With regard to the question raised by the Honorable Member for Bengal, the Honorable Member had mentioned the case of a witness who said that he saw A strike B, whereas it subsequently came out in evidence that A was not there, and could not therefore have struck B. That would be perjury under the definition of the present Code, inasmuch as A made a statement which he knew to be false. Then supposing A did strike B, and the witness was not there, it would still be perjury, because the statement which he made was false, and false to his own knowledge. The object of the alteration therefore was to get rid of remote questions and deal with the evidence as given by the witness. The offence was perjury when the witness committed himself to a statement which was false to his knowledge or belief.

MR. SCONCE said, he had understood the word "statement" in the Section to refer to the narrative or substance of a deposition and not to the words as spoken by a witness. But the explanation of the Honorable and learned Chairman showed that the word should be otherwise construed, and that, to establish false evidence, the false statement would be personal to the witness. He was under the apprehension that this Section changed the present law.

THE CHAIRMAN said, he thought the words were scarcely open to the objection of the Honorable Member for Bengal. He (the Chairman) believed that the Honorable Member for Bombay called the attention of the Council at the last Meeting to illustration C, as being inconsistent with the definition. Now the question of hand-writing was not always proved as a matter of fact, and depended a great deal on evidence as to belief. In this manner a son or a friend was frequently called to prove the hand-writing of a deceased party on a Bill of Exchange. The Court did not require the witness to swear to the fact of the hand-writing being that of the deceased, but simply to his belief. Of course it was always a question for those who decided upon the fact to consider what grounds the witness had for his belief and whether he had any object or inducement to give false evidence. Suppose a witness were asked—"Do you believe that signature to be A's," and he replied, that he could not swear to that being A's signature. On the Judge telling him that he was not required to swear to the fact but to his belief of that being A's hand-writing, the witness might say, "I do not believe that that is A's hand-writing." In such a case the witness could hardly be indicted for perjury; but if it could be proved that, before he went into Court, he told others that, although he knew that to be A's hand-writing, he would swear that it was not so, he would be guilty of perjury The first allegation against him would be that he had made a statement which was false, and the second that he had made a statement knowing it to be false.

Sections 11 to 13 of Chapter XI were passed as they stood.

Section 14 (which provided against the secreting or destruction of a document to prevent its production as evidence) was passed after the insertion of words providing for the offence of obliterating or rendering illegible any such document, whether in whole or in part.

Sections 15 to 21 were passed as they stood.

Section 22 was passed after a verbal amendment.

Sections 23 to 28 were passed as they stood.

Section 29 provided as follows:—

"Whoever, being a public servant, makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

MR. FORBES said, he thought this Section introduced too great a refinement. It involved a question of belief.

THE CHAIRMAN said, it was not a question of belief, but a question of knowledge.

MR. FORBES said, he did not see how the knowledge of the Judge was to be proved except by his belief.

SIR CHARLES JACKSON asked, who was to prosecute a Judge of the Supreme Court? He thought that the policy of the English law was to prevent Judges from being exposed to vexatious or vindictive proceedings.

THE CHAIRMAN said that a Judge ought to be punished if he passed a sentence contrary to law. A Judge might, before going into Court, say that he would punish a man whether right or wrong. The Section under consideration stood as Section 142 in the Original Code, which provided as follows:—

"Whoever, being a Judge, pronounces on any question which comes before him in any stage of any judicial proceeding, a decision which he knows to be unjust, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

The following was an extract from the Report of the Law Commissioners with reference to that Section:—

"Objections to this Clause are made by many Officers, which may be summed up in the question of Sir H. Seton, 'who is to decide what is unjust, and how is the knowledge of it to be proved?' Her Majesty's Justices are required by their oath to 'do equal law and execution of right,' that is, as it is expressed in the margin, 'to do justice' to all her Majesty's subjects, and it is provided in the Digest, (that is, the Digest which was prepared by the Criminal Law Commissioners in England, but which had never been passed) that all who shall be found in default in any of the points contained in the oath shall be punished with imprisonment not exceeding three years and fine, with a saving Clause that 'no judicial officer shall be criminally liable in respect of any error in giving judgment.' It seems to us that a Judge, who by his decision, does injustice, not by error of judgment, is in other words a Judge who pronounces a decision which he knows to be unjust. We apprehend that the expression 'which he knows to be unjust' was adopted purposely to exclude the excuse of an error of judgment, and that the meaning is that a Judge who pronounces a decision which is unjust without the excuse of an error of judgment, must be presumed to have pronounced the decision conscious of its injustice, and shall be liable to punishment accordingly. So understood, the Clause appears to us no more exceptionable than the English law in the same matter, as it is expressed in the Digest. Mr. A. D. Campbell suggests that the words 'contrary to law,' should be substituted for 'unjust.' 'as it is not intended that the Code should meet individual opinions of justice, except as these may coincide with the sentiments of the Legislature;' but such a substitution would narrow the provision to a degree that would greatly impair its efficacy, for many a decision may be unjust, which cannot be said to be contrary to any law, except the general law which requires justice to be done."

After some conversation, the consideration of Section 29 and also of Section 30 (relating to commitment for trial or confinement by a person having authority who knew that he was acting contrary to law), was postponed, on the Motion of Sir Charles Jackson.

Sections 31 to 34 were passed as they stood.

Section 35 (providing for cumulative punishment) was omitted.

Section 36 was passed as it stood.

The Chairman

Section 37 (providing for cumulative punishment) was omitted.

Section 38 was passed as it stood

Section 39 (providing for unlawful return from banishment) was omitted.

Sections 40 and 41 were passed as they stood.

Section 42 (providing for cumulative punishment) was omitted.

Section 43 was passed after a verbal amendment.

Chapter XII provided for offences relating to Coin and Government Stamps.

Section 1 was passed after amendments.

Section 2 was omitted.

Section 3 was passed after a verbal amendment.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council adjourned.

Saturday, September 15, 1860.

PRESENT:

The Hon'ble the Chief Justice *Vice-President* in the Chair.

Hon'ble Sir H. B. E. Frere.	H. Forbes, Esq.,
Hon'ble C. Beadon,	A. Sconce, Esq.,
H. B. Harington, Esq.,	and C. J. Erskine, Esq.,

COTTON-FRAUDS.

THE CLERK presented a Petition from Messrs. Fischer and Co, merchants of Salem, in Madras, praying for the extension to the Madras Presidency of the provisions of Act XV of 1851 (for the better suppression of frauds in respect of Cotton in Bombay).

MR. FORBES moved that the Petition be printed.

Agreed to.

PAPER CURRENCY.

THE CLERK reported that he had received by transfer from the Finha

cial Department a communication from the Bombay Government, forwarding the opinion of the Chamber of Commerce of Bombay on the subject of the Paper Currency measure proposed for India by Mr. Wilson.

MR. ERSKINE moved that the communication be printed.

Agreed to.

RECOVERY OF RENTS (BENGAL.)

MR. SCONCE, in moving the first reading of a "Bill to amend Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal)," said that the purpose of this Bill was simply to correct what appeared to have been an oversight in the original Act, and not to challenge discussion on any of the important questions or principles on which that Act was founded The question involved in the Bill was confined to the limitation of suits under Section XXX of the Act. The Act provided periods of limitation in certain cases, and Section XXX enacted that—

"Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action."

Thus the general rule of limitation for ordinary suits, with certain exceptions, was one year. In such cases, before that Act was passed, the ordinary rule was twelve years. The effect of that Act had therefore been to reduce the period of limitation from twelve years to one year, and thus it might happen, and in some cases had happened, that the period of one year allowed for the institution of a suit had elapsed before the Act came into force. The purpose of this Bill was to allow a certain period of two years, in cases in which the former period of limitation had been reduced A similar rule was followed in the general limitation law passed in 1859, Act XIV of that year, which provided that—

"All suits that may be now pending or that shall be instituted within the period of two years from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed."

Adopting this principle, he (Mr. Sconce) proposed to provide by Section I of the Bill he was now introducing—

"The following provision shall be read as part of Section XXX Act X of 1859 :—'If in any suit to which this Section is applicable, the cause of action shall have accrued before the 1st day of August 1859, such suit shall be instituted within two years from that day or within the time allowed for the institution of the same by any law in force before the passing of the said Act, whichever may first expire.'"

If it should happen in any case that the period of limitation allowed by the said law would expire within two years, the old law would be followed.

The second Section was to enable parties, whose suits or appeals had been dismissed or rejected on the ground that the suit had not been commenced within the period prescribed in Section XXX of the existing Act, to apply for a revival of the same within four months.

With these observations he begged to move the first reading of this Bill.

The Bill was read a first time.

EMIGRATION TO THE FRENCH COLONIES.

MR. BEADON rose to move the second reading of the Bill "to authorize and regulate the emigration of native laborers to the French Colonies." In doing so, he said that it had been his intention to move the suspension of the Standing Orders to enable him to carry the Bill through its remaining stages. The urgency of the case was great, particularly with reference to the six thousand laborers required at once for Bourbon But on considering the Bill, he had found so many points upon which he entertained doubts, that he thought the Council should have the advantage of a report from a Select Committee before proceeding to the third reading of the Bill. He did not think it was necessary for him to add much to what he had stated on the occasion of moving the first reading of the Bill. There was only one point upon which he wished

to make a few remarks. It was a point on which he entertained some little doubt himself, and to which he desired to draw the serious attention of the Council.

A question had been raised, whether in passing an Act to give effect to this Convention, we were at liberty, or rather, he should say, whether it was consistent with the conditions on which the Convention had been agreed upon, to reserve to this Council or to the Executive Government of India a power of interference, so that, in case the Convention should be violated in any colony, the Government might have the power of suspending the emigration of laborers to that colony. He (Mr. Beadon) confessed that his own view was that we were not so restricted, and that the Council might fairly and unobjectionably give the Governor-General the same power to interfere in behalf of coolies emigrating to the French colonies as he now possessed with regard to those proceeding to our own colonies. The Council was doubtless fully aware that in 1856 the Honorable and learned Vice-President, who was then a Member of the Supreme Government, brought in a Bill to empower the Governor-General in Council to suspend the laws relating to emigration to any of our own colonies in which he had reason to believe that proper measures had not been taken for the protection of the emigrants immediately upon their arrival at, or during their residence in, the colony, or for their safe return to India. The immediate occasion of that was the gross ill-treatment of certain coolies who had emigrated to the Mauritius a short time before. In consequence of the prevalence of cholera at that time at Port Louis, and the fear on the part of the inhabitants that the infection was brought there by the Indian emigrants, the vessels in which they arrived, instead of being allowed to go into the harbour, were obliged to lie in the open road-stead and to land the emigrants on a barren rock, where they were left for days without any shelter or protection from the weather, and without any proper medical attendance. The result was that the mortality among these poor people was frightful. The Colonial Government not being able to give a satisfactory explanation on the subject, or to afford any reliable assurance that such a calamity would not occur again, the Governor-General in Council felt himself bound to apply to the Legislature for an Act to suspend emigration to that colony. Accordingly, the Bill to which he had referred was passed as Act XIX of 1856, giving the Executive Government the power of suspending the emigration laws in respect to any British colony in which there might be a failure to fulfil the conditions on which the emigration of Indian laborers was permitted, and of withdrawing the suspension when satisfied that proper measures had been taken to secure the fulfilment of those conditions. Now it seemed to him (Mr. Beadon) that the Governor-General in Council ought to possess the same power in regard to coolies going to the French colonies. The only objection which might be felt to the measure was this. We were called upon to pass an Act to give effect to a Convention which had been agreed upon between the French and English Governments, and it might be said that the only power that could put an end to that Convention was one of the contracting parties to it. It was possible that the French Emperor might object to sign the Convention if he saw that, in the Act of the Indian Legislature, power was reserved to the Governor-General in Council to suspend emigration under any circumstances; but he (Mr. Beadon) did not think that such a consideration should prevent this Council from vesting the Governor-General with the power, because that power, when given, could only be exercised with the permission of Her Majesty's Government. If the French Government should object on the ground that the Governor-General in Council virtually retained the power of putting an end to the Convention, it could readily be explained why such a precaution was considered necessary. It could be

shown that the effect of it was only to place emigration to French and British Colonies on the same footing, and that the power would be exercised, if at all, under general instructions from Her Majesty's Government in England. If the terms of the Convention should under any circumstances be violated by the agents of the French Government, he (Mr. Beadon) did not think that it materially signified whether the power of suspension was exercised here or by the Government at home. It was clearly necessary that the Governor-General in Council should have the power, so that the very moment he saw that the rules had been infringed in any colony, and especially in Bourbon, he could put a stop to the further emigration of laborers, pending a reference to Her Majesty's Government on the subject. This was the only matter on which he (Mr. Beadon) desired to make any observations. The Bill as printed did not give such a power, but he proposed to add a Clause to that effect. There was a doubt indeed whether Act XIX of 1856 might not be made applicable to the French colonies; but, on the whole, he (Mr. Beadon) thought it best to provide for it expressly in the last Section of the Bill. He did not know if it were necessary for him to say more at this stage of the proceedings, and he would therefore conclude by moving the second reading of the Bill.

MR. SCONCE said he had very little to say on the subject of this Bill, and that certainly would not be in opposition to it. His idea was that the natives of India had a perfect right to go wherever they pleased and to carry their labor to the best market. He would not say that he had mastered the Bill in all its details. But from the remarks which had just fallen from the Honorable Member to his right (Mr. Beadon) with regard to the terms of the Convention on which the Bill was founded, it seemed to him (Mr. Sconce) that we ought not to legislate on the Convention. At any rate, we should not embody the Convention in the Bill. We should do what was right, both as regards the coolies, and, if possible, the French Government. We should act on the principle of legislating justly and properly, and not on the principle of obtaining a *quid pro quo*. If the question, whether the coolies should go, or should not go, to the French Colonies, depended on the circumstance of the English Government obtaining an equivalent, that would be in the nature of a bargain and was certainly, as he thought, opposed to the principle on which he was disposed to act, that is, the freedom of the coolies and their right to emigrate irrespectively of any arrangement that might be made in England in which they had no interest. We had an illustration of legislating upon a Convention in the present session of Parliament. He alluded to the treaty of commerce lately concluded between the French and English Governments. The engagements of that treaty were accepted early in the session, but he had a strong impression, from the political events that subsequently occurred in Europe, that the House of Commons would not have encumbered their own legislation with the conditional engagement entered into with France. He should, therefore, prefer independent legislation on this occasion, with exclusive reference to the object to be attained. So far as the coolies themselves were concerned, it might be extremely proper that the local Government, or the Home Government, should be able to provide for the establishment of a Consulate at each colony, so as to take care that the coolies were properly treated, that justice was fairly administered to them at the colony, and that proper arrangements were made to enable them to return on the expiration of their term of service.

There were one or two points in the Bill which also seemed to him to be open to some objection. The first was as to Section VI, which provided that—

"No emigrant shall be embarked under this Act, unless the Protector of Emigrants shall have been enabled to satisfy himself either that such emigrant is not a British subject, or,

if a British subject, that his engagement is voluntary."

Therefore, what he understood from these words was that, where emigrants were gathered at a depôt, it was only with regard to those emigrants who were British subjects, and not with regard to any others, that the Protector was required to satisfy himself that their engagement was voluntary. With regard, therefore, to emigrants other than British subjects, theirs would virtually be an embarkation by force, and this was a matter to which he thought we should not give our sanction. A somewhat similar blot lurked in Section XXIX, which enacted as follows :—

"In the said Ports of Calcutta, Madras, and Bombay, the Emigrants who are subjects of Her Majesty shall be at liberty, in conformity to the regulations of Police relating to the depôts where such emigrants reside prior to departure, to leave such depôts or other places in which they may be lodged in order to communicate with the Protector of Emigrants, &c."

So that those in the depôts who were British subjects, and not others, would be allowed to leave the depôts for the purpose of communicating with the Protector, and thus our law would permit natives of foreign states to be detained and treated as slaves.

These were the only points on which he (Mr. Sconce) entertained doubts. In expressing them, however, he wished to repeat that it was not his intention to offer any opposition to the second reading of the Bill.

THE VICE-PRESIDENT said, he had only a few words to say on the subject of this Bill. It appeared to him perfectly clear that, as had been observed by the Honorable Member for Bengal, we ought not to restrict the native laborers of this country from emigrating to any place where they pleased and where they thought they were likely to get the best remuneration for their labor. The only difficulty was that the people of this country were in a state of utter ignorance, and were, comparatively speaking, mere children. Consequently we were bound to look after their interests and not for our own benefit, and we should not only see that the laborers were properly taken care of, but that they thoroughly understood the terms upon which they were to leave the country. On being satisfied of these matters, we no longer had any right to restrain them from going to any Colony they pleased. It had been usual hitherto to pass separate Acts authorizing the emigration of laborers from this country to the several Colonies. This was in consequence of a general law existing, restricting emigration altogether; so that, when it was considered expedient to allow emigration to any Colony, it became necessary to pass a special law for the purpose. In passing such special laws, we had invariably included in them provisions requiring the laws of the country to which emigrants were going, to be properly explained to them, and stipulating for their return to India after a certain period. That duty had hitherto devolved upon the Governor-General in Council, and there was a Clause in each special law which provided that the Act should not come into force until the Governor-General in Council declared that he was satisfied that the laws of the Colony to which the Act related were sufficient to protect the laborers going thither. There were also provisions requiring each laborer to be examined by the Protector of Emigrants, who was to satisfy himself that the laborer was going of his free will and accord before he was allowed to embark. That was not provided for by the present Bill, and was not, it appeared to him (the Vice-President), necessary, because he thought we might safely trust Her Majesty's Ministers that they would not allow Coolies to go to any place unless they were satisfied that the Coolies would be properly treated. There was, however, some ambiguity in Article 23 of the Convention which provided as follows :—

"The labor regulations of Martinique shall serve as the basis for all the regulations of the French Colonies into which Indian Emigrants, subjects of Her Britannic Majesty, may be introduced.

'The French Government engages not to introduce into those regulations any modification, the result of which would be to place the said Indian subjects in an exceptional position, or to impose upon them conditions of labor more stringent than those prescribed by the said regulations."

He was not aware what were the laws in force in Martinique. With regard to our own Colonies, the Governor-General in Council was required, before allowing an Act to come into force, to see that the laws of the Colony to which it applied were sufficient. He (the Vice-President) did not think that it was necessary in this case for the Governor-General in Council to satisfy himself respecting the laws of Martinique. It appeared to him most probable that Her Majesty's Ministers, before entering into the present Conventi n had thoroughly satisfied themselves that the laws at Martinique were sufficiently just; and he thought we might be satisfied that, if upon the authority of Her Majesty's Ministers, we were to authorize the emigration of Coolies to the French Colonies, they would be properly treated there.

The next question was whether there were any provi ions in the Convention which appeared to be unjust. The Honorable Member for Bengal had alluded to Articles 6 and 12 of the Convention as being objectionable. Now he (the Vice-President) quite agreed with the Honorable Member that we ought not to allow any laborer, so long as he was a resident in any portion of British territory, no matter whether he was a British or Foreign subject, to emigrate without ascertaining that his engagement was voluntary, or to be locked up in a depôt and prevented from communicating with the Protector of Emigrants. Such a proceeding could only be justified in the case of criminals surrendered under the terms of some special Convention with a Foreign Government. But supposing a French Coolie was unwilling to go to a French Colony, it was the duty of this Council to prevent his being carried away by force. Section XXIX of the Bill, which was the same as Article 12 of the Convention, provided as follows:—

"In the said Ports of Calcutta, Madras and Bombay respectively, the emigrants who are subjects of Her Majesty, shall be at liberty, in conformity to the regulations of Police relating to the depôts where such emigrants reside prior to departure, to leave such depôts or other places in which they may be lodged in order to communicate with the Protector of Emigrants, &c."

That certainly implied that, if they were not British subjects, they could not go out of the Depôt for the purpose of consulting the Protector of Emigrants; and Section VI, which carried out Article 6 of the Convention, provided that—

"No emigrant shall be embarked unless the Agent described in the preceding article shall have been enabled to satisfy himself either that the emigrant is not a British subject, or that his engagement is voluntary, that he has a perfect knowledge of the nature of his contract, of the place of his destination, of the probable length of his voyage, and of the different advantages connected with his engagement."

He (the Vice-President) did not think we ought to allow any Coolie whether he was a British or Foreign subject, to engage himself, unless he was made thoroughly acquainted with the conditions on which he was emigrating. This was a matter requiring the particular attention of the Select Committee to whom the Bill would be referred for consideration. He was not sure whether the Articles of the Convention were intended to be obligatory on the French Government only as regarded emigration from our Ports and not from a French Port, for he believed that the French Government were to be at liberty to embark Coolies from a French Port; but as the French Government, though anxious to export French Coolies from French Ports, had agreed not to take any British subjects from French territory without affording them an opportunity of first communicating with the Protector, he (the Vice-President) was of opinion that it was the duty of this Council to see that the same privilege was granted to a French

subject embarking from a British Port, and that no Coolie whatever, residing in British Territory, should be taken out of or confined in such territory against his will, though he might have entered into an agreement with the Emigration Agent. He (the Vice-President) thought that no Coolie should be allowed to leave the country without clear proof having been previously given as to his being a consenting party. These, however, were questions which would be considered by the Select Committee, and he should not have referred to them at present, had they not been noticed by the Honorable Member for Bengal.

With regard to the question of investing the Governor-General in Council with the power of revoking the law, he (the Vice-President) thought that we ought not to give the Governor-General such a power. If the necessity for revocation should arise, this Council alone ought to repeal the Act. But he doubted if the Council had the power of repealing the Act, for the Home Government could disallow the repealing Act and order us to repeal it. Then the question was whether we should give the Governor-General the power of suspending emigration at any moment. In reply to this, it might be said that the Home Government could restrain the Governor-General in the same manner as they could this Council. Now if we were to confer that power on the Governor General, he would be able to put a stop to the Convention, Article 1 of which provided as follows:—

"The French Government shall be at liberty to recruit and engage laborers for the French Colonies in the Indian territories belonging to Great Britain, and to embark Emigrants, being subjects of Her Britannic Majesty, either in British or French Ports in India, under the conditions hereinafter stipulated."

Here then was to be a binding contract between the British and French Governments that the latter should be at liberty to recruit and engage laborers for their Colonies. Before concluding the Convention, the French Government wished to ascertain whether the Indian Legislation would pass an Act to authorize emigration to the French Colonies; and all that this Council had to do was to be satisfied that the Home Government would see that the conditions of the Convention were fairly and fully carried out. Article 26 then provided as follows:—

"The present Convention shall begin to take effect on the 1st of August 1861, and shall continue in full force for three years and a half. It shall remain in full force, if notice for its termination be not given in the course of the month of August of the third year, and then notice can be given only in the course of the month of August of each succeeding year.

In case of notice being given for its termination, it shall cease eighteen months afterwards."

Thus by an obligation binding on Her Majesty's Government and the French Government, the latter would be at liberty to recruit laborers for three years and a half. Ought we therefore to give the Governor-General in Council the power of stopping this emigration, which would in fact be a breach of the Convention and was likely to lead to unpleasant results? But then it might be said that the French Government might be the first to violate some of the terms of the treaty and thus put an end to the Convention. That however, it appeared to him (the Vice-President), was not a question between the French Government and the Government of India, but a question between Her Majesty's Government and the French Government only. It appeared to him therefore that, if we could trust Her Majesty's Government with the power of ascertaining whether the laws in force at the place to which emigration was to be allowed were sufficient for the protection of the Coolies, we might also safely leave it to Her Majesty's Government to put an end to the Convention when they thought it necessary to do so. For these reasons he thought that it would be injudicious for the Council to confer the power in question on the Governor-General in Council.

With regard to our own Colonies the case was quite different, for we had always trusted and could trust the Governor-General in Council with that power without putting Her Majesty's

The Vice-President

Government in the same difficult position. There was no binding contract between us and any of the Colonial Governments, and therefore there was some reason why the Governor-General in Council should be able at any time to put an end to emigration thither.

With regard to the observation of the Honorable Member for Bengal that we ought not to introduce the Convention into the Bill, he (the Vice-President) confessed he saw no objection to it. There were many Acts of Parliament which recited Conventions, as for instance the Act for giving effect to a Convention with the French Government regarding the surrender of criminals, and the Act for carrying out a treaty with the Government of the United States for a similar purpose. He thought that the Convention was our justification for passing this Act. He did not mean to say that, because Her Majesty's Government were about to enter into this Convention, we were bound to pass the Act; but that we should do so, if we thought it just and proper to allow emigration to the French Colonies.

MR. BEADON said, he did not understand that the Honorable Member for Bengal or the Honorable and learned Vice-President had offered any opposition to the second reading of the Bill, and therefore perhaps it was scarcely necessary for him to say anything more on the subject. But he thought he ought to refer to the objections which had fallen from the Honorable Member for Bengal, though they had been in a great measure answered by the Honorable and learned Vice-President, who had shown that it was usual to embody in enactments Conventions requiring legislation to give them effect.

The Honorable Member for Bengal had referred to the disfavor with which the recent commercial treaty with France had been received in Parliament; but he (Mr. Beadon) apprehended that the objection was not to the embodiment of the treaty in a Bill, but to the treaty itself, on the ground that commerce was not a fit subject for treaties, but that every nation should be left to adjust its own tariff on sound principles without regard to what the rest of the world might do.

With regard to the objections made to Sections VI and XXIX of the Act which were founded on Articles 6 and 12 of the Convention, he admitted that these objections were not without force. These were two of the Sections which, he thought, required to be carefully considered by a Select Committee before they came under the consideration of the Council. If the Council would refer to Article 5 of the Convention, it would be found there stated—

"The Government of Her Britannic Majesty shall appoint in those British Ports where Emigrants may be embarked, an Agent who shall be specially charged with the care of their interests.

"In French Ports the same duty with regard to Indian subjects of Her Britannic Majesty shall be confided to the British Consular Agent;"

and then came Article 6 which declared that—

"No Emigrant shall be embarked unless the Agent described in the preceding Article shall have been enabled to satisfy himself either that the Emigrant is not a British subject, that his engagement is voluntary," &c.

It was quite clear that this Article chiefly referred to emigration from French Ports and provided full protection to British subjects emigrating from those Ports to the French Colonies. It was of course impossible that we could attempt to interfere with French subjects in French territory, though in our own territory French and British subjects were alike free and entitled to the protection of the law. The same remark applied to Section XII. In framing these Sections he allowed that the distinction had not been sufficiently adverted to, and it might on consideration be thought expedient to make them applicable only to emigration from French Ports.

With regard to the observations of the Honorable and learned Vice-President regarding the power which it had been proposed to confer on the

Governor-General in Council to suspend the operation of the Act, he must confess, with great deference, that some of the arguments used by the Honorable and learned Gentleman rather tended to convince him the more of the necessity for making such a provision. It was perfectly true that, if we once passed the Act, we could not be sure of being able to repeal it, because the Government at home had the power to disallow the repealing Act and order its repeal. He therefore thought it the more necessary to put into the hands of the Governor-General in Council some power to interfere on behalf of the Coolies emigrating to the French Colonies, so that if, in any Colony they were not treated according to the terms of the Convention, the Government of India might be able to prevent further emigration to that Colony, pending a reference to England. If it should come to the knowledge of the Government of India that, owing to the misconduct of the subordinate agents of a Colonial administration or from any other cause, some gross oppression had been practised upon emigrants from the British territories in India, it would be three months before any action could be taken, if it were necessary to refer the matter in the first instance to the Home Government. In the meantime a stream of Coolies might be leaving India for that Colony, and the Governor-General in Council, though knowing the sort of treatment they were likely to be subjected to, would be unable to prevent them from going there. If this power were reserved to the Governor-General in Council, it would of course be exercised under the control and direction of Her Majesty's Government at home, who might permit its free exercise or limit it by any conditions they chose to impose, or disallow it altogether. At any rate, the Council would have done its duty in reserving the power to the Governor-General in Council, leaving its exercise to be determined by Her Majesty with reference to political considerations. It might be that the Home Government would not under certain circumstances wish to put an end to the Convention altogether, but yet might desire to suspend emigration, pending negociations with the French Government. If there were no power to suspend emigration, Her Majesty's Government, if they thought that the Convention had been violated in any Colony and that emigration thither should cease, would have to send out instructions to repeal the whole Act. Thus the Government would be driven to the alternative of either allowing that to go on which they knew to be wrong or annulling the Convention altogether, whereas, if the Governor-General in Council had the power to suspend the Act temporarily, an opportunity would be given for explanation in the matter, and if the explanation were satisfactory, emigration might be resumed. He (Mr. Beadon) did not think that the Emperor of the French could reasonably object to the exercise of such a power by the local Government, and it appeared to him to be incumbent upon the Council to reserve the power of interference for the protection of the Coolies, whether Her Majesty's Government thought proper to sanction its exercise or not

THE VICE-PRESIDENT said, he only wished to explain that, if a case of that kind were to arise, although we should not anticipate it, it could be dealt with by this Council just as much as by the Governor-General in his executive capacity.

MR. BEADON said, the distinction he wished to draw was that, if we were to repeal the Act, we should be virtually putting a stop to the Convention.

THE VICE-PRESIDENT said, we might repeal the Act as to a particular Colony, or pass just such an Act as the Governor-General in Council would make an order.

MR. HARINGTON said, he thought that the question which had been raised, as to whether power should be given to the Governor-General in Council at any time to suspend the operation of the law which they were now asked to pass in the event of any material violation of the terms on which emigration was to be allowed

from India to any French Colony, must undergo further discussion in Committee. As he read Act XIX of 1856, it would apply to the Bill under consideration equally with the emigration laws which were in force at the time that Act was passed. The Preamble certainly referred only to Acts which had already been passed, but the first Section said :—

"Whenever the Governor-General of India in Council shall have reason to believe that in any Colony or place to which the emigration of natives of India is allowed, &c."

These words appeared to him to give to the Act a prospective as well as retrospective effect in respect to any legislation relating to emigration. The point was clearly one which should not be left in doubt, and if it was thought that the Governor-General in Council ought not to exercise the power with which he was invested by Act XIX of 1856 in respect to the law now under consideration, the Bill should contain an express declaration to that effect. He entertained no doubt as to the competency of this Council to give the Governor-General in Council the powers described in Act XIX of 1856 in respect to the Bill before the Council. If the Council were at liberty to reject the Bill because they were not satisfied with the terms of the Convention or for any other reason, and he supposed that no one would question the power of the Council in this respect, they must, he thought, be equally competent to limit the period for which the Bill should remain in force, or to give to the Governor-General in Council the same power for suspending at any time for any sufficient reason the operation of the Bill which he already possessed by legislative enactment in respect to all other emigration laws. Whether these powers should be given in the present instance, was a question which he should prefer to consider more fully when the Bill got into Committee.

The Motion was then put and carried, and the Bill read a second time.

MR. BEADON moved that the Standing Orders be suspended to enable him to carry the Bill through its remaining stages.

SIR BARTLE FRERE seconded the Motion, which was put and carried.

MR. BEADON then moved that the Bill be referred to a Select Committee, consisting of Mr. Forbes, Mr. Erskine, and the Mover, with an instruction to submit their Report on Saturday next.

Agreed to.

THE VICE-PRESIDENT said that, as this Bill was a very important matter affecting all the Presidencies, if there was no objection, he would beg to move that Mr. Harington and Mr. Sconce be added to the Committee.

Agreed to.

PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Bill

MR. BEADON went back to Section 1 of Chapter XII, and moved the addition of the following Illustration.—

"The Coin denominated as the Company's Rupee is the Queen's Coin."

Agreed to.

THE CHAIRMAN also went back to Section 3 and proposed an amendment in the Explanation, which was carried.

Sections 4 and 5 were passed after verbal amendments.

Section 6 was passed as it stood.

Sections 8 to 10 were passed after amendments.

Sections 11 to 25 were passed as they stood.

Sections 26 to 30 were passed after verbal amendments.

Sections 31 and 32 were passed after amendments, including the substitution of seven years for two years, as the term of imprisonment.

Section 33 was passed after a verbal amendment.

Sections 34 and 35 were passed as they stood.

Chapter XIII (of offences relating to Weights and Measures) was passed as it stood.

Chapter XIV (of offences affecting the Public Health, Safety, Convenience, Decency, and Morals) was passed after amendments in Sections 14 and 27.

Chapter XV (of offences relating to Religion) was passed after the omission of Section 4 (providing for cumulative punishment).

The consideration of the Bill was then adjourned, and the Council resumed its sitting.

EMIGRATION TO SAINT KITTS.

SIR BARTLE FRERE moved that the Council resolve itself into a Committee on the Bill "relating to the Emigration of Native laborers to the British Colony of St. Kitts."

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

NOTICE OF MOTION.

MR. HARINGTON gave notice that he would, on Saturday next, move the first reading of a Bill for licensing and regulating Stage Carriages.

The Council adjourned at 5 o'clock on the Motion of Sir Bartle Frere, till Tuesday, the 18th instant, at 7 o'clock in the morning.

Tuesday Morning, Sept. 18, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq.,
Hon'ble C Beadon,	C. J. Erskine, Esq.,
H. B Harington, Esq.,	and
H. Forbes, Esq.,	Hon'ble Sir C. R. M. Jackson.

PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Bill.

Section 1, Chapter XVI (of offences affecting the Human Body) was passed with the addition of the following Illustration :—

"A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush ; A not knowing that he was there. Here although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or cause death by doing an act that he knew was likely to cause death."

Section 2 related to murder.

Amendments were made in Illustration (*b*), in Exception 1 and its Explanation, and in Exception 3.

Exception 5 provided as follows :—

"Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustrations.

(*a*) A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here on account of Z's youth, he was incapable of giving consent to his own death ; A has therefore abetted murder.

(*b*) Z, a Hindoo widow, consents to be burnt with the corpse of her husband. A kindles the pile. Here if Z be above the age of eighteen years, A has committed culpable homicide. If Z be under that age, A has committed murder."

SIR CHARLES JACKSON said, he objected to this Exception on principle. He thought that a man who killed another *primâ facie* committed murder, even if he had obtained the consent of the murdered man, because no man had a right to give his consent to the commission of any unlawful act. The Exception seemed to him (Sir Charles Jackson) to be founded upon the false principle that the consent of a person to his own death absolved another from causing his death. The act was *primâ facie* a malicious one, and the consent of the party could not in any sense be regarded as a legal consent. He (Sir Charles Jackson) thought it a violation of principle not to call that mur-

der. He should therefore move for the omission of the Exception.

THE CHAIRMAN said, he hardly thought that a man who killed another with his consent should be punished with death He thought there should be some distinction between such an offence and a murder committed with a malicious intent. But if the Council were in favor of the omission of the Exception, he would not object to it, for he did not see that there would be any very great harm, whether in omitting or retaining it. He would read to the Council what the framers of the Code said on this subject:—

"The second mitigated form of voluntary culpable homicide is that to which we have given the name of voluntary culpable homicide by consent. It appears to us that this description of homicide ought to be punished, but that it ought not to be punished so severely as murder. We have elsewhere given our reasons for thinking that this description of homicide ought to be punished.

Our reasons for not punishing it so severely as murder are these—In the first place the motives which prompt men to the commission of this offence are generally far more repectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes of a strong sense of honor, not unfrequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain, the friend who supplies laudanum to a person suffering the torment of a lingering disease, the freedman who in ancient times held out the sword that his master might fall on it, the high-born native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian societies, scarcely be thought culpable, and even in Christian Societies would not be regarded by the public and ought not to be treated by the law as assassins.

Again, this crime is by no means productive of so much evil to the community as murder. One evil ingredient of the utmost importance is altogether wanting to the offence of voluntary culpable homicide by consent. It does not produce general insecurity. It does not spread terror through society. When we punish murder with such signal severity, we have two ends in view. One end is that people may not be murdered. Another end is that people may not live in constant dread of being murdered. This second end is perhaps the more important of the two. For if assassination were left unpunished, the number of persons assassinated would probably bear a very small proportion to the whole population. But the life of every human being would be passed in constant anxiety and alarm. This property of the offence of murder is not found in the offence of voluntary culpable homicide by consent. Every man who has not given his consent to be put to death is perfectly certain that this latter offence cannot at present be committed on him, and that it never will be committed, unless he shall first be convinced that it is his interest to consent to it. We know that two or three midnight assassinations are sufficient to keep a city of a million of inhabitants in a state of consternation during several weeks, and to cause every private family to lay in arms and watchmen's rattles. No number of suicides, or of homicides committed with the unextorted consent of the persons killed, could possibly produce such alarm among the survivors.

The distinction between murder and voluntary culpable homicide by consent has never, as far as we are aware, been recognized by any Code in the distinct manner in which we propose to recognize it. But it may be traced in the laws of many countries, and often, when neglected by those who have framed the laws, it has had a great effect on the decisions of the tribunals, and particularly on the decisions of tribunals popularly composed. It may be proper to observe that the burning of a Hindoo widow by her own consent, though it is now, as it ought to be, an offence by the Regulations of every Presidency, is in no Presidency punished as murder."

The following was an extract from a subsequent Report of the Law Commissioners reviewing the opinions which had been received on the Original Penal Code:—

"In the Digest of the English Criminal law it is declared that homicide is neither justified nor extenuated by reason of any consent given by the party killed.

Of the Clause in the Indian Code which recognizes 'voluntary culpable homicide by consent' as a distinct offence less than murder, Sir R. Comyn observes, 'the Clause it is true is guarded by several provisions, one of which relates to the state of mind of the party consenting to be killed, but putting aside for argument's sake all religious considerations of a future state, and merely adverting to man's strong natural love of life even in the most desperate circumstances, the mere fact of a person consenting to be killed would indicate a morbid state of mind sufficient to raise a doubt of his sanity. I cannot think that in any country or under any religion voluntary homicide should be leniently dealt with, or that any special circumstances like those supposed in the note would justify a law introducing the novel offence of homicide by consent.'

Sir J. Awdry referring to the Chapter of General Exceptions says, 'I agree to the exception grounded on the sanctity of human life, and I wish that they (the Commissioners) had elsewhere followed up the principle instead of providing that homicide by consent should not be murder. The prerogative of mercy would much better be allowed to apply when necessary to such cases, than a rule be laid down that a man has to some extent a right to authorize its destruction.'

Mr. Hudleston says, 'it appears to me no alleviation of homicide that I have another's consent to kill him.' Mr. A. D. Campbell on the other hand considers that the reasoning in page 61 of Note M. fully justifies the general principle.

Mr. Norton says, 'I had imagined that the Clause 298 was devised with a view mainly of punishing duels with a mitigated sentence, and for distinguishing deaths by such a deliberate act from murders. I was disposed under that impression to intimate my concurrence. But neither in the Illustrations or the Notes is any such object alluded to, and the only application of the Clause seems to me to be to cases of extraordinary local superstitions (better legislated upon specifically) or to those which are almost, or purely imaginary. The Clause in this view appears to me unnecessary and liable to ridicule.'

Mr. Greenhill, a Judge of the Sudder Court at Bombay, understands this Clause to include fatal duels.

The Judges of the Sudder Court, North-Western Provinces observe that duelling is not specifically alluded to in the Code, but they conclude that it is provided for in Clause 294 and Clause 320 according as death or wounding may have ensued

We observe that in the Draft of the Code first printed, a duel was given as an Illustration of 'voluntary culpable homicide by consent.' The wording of the definition was slightly altered on revision, but we think Clause 298, as it stands, takes in the case of a person killed in a duel, as one 'who suffers death or takes the risk of death by his own choice.' And if the Clause be retained, if voluntary culpable homicide by consent be recognized as a distinct offence, we know not but it may be the best way of dealing with a species of crime which it has hitherto been found impossible to deter men from by the dread of capital punishment. It is in vain to denounce a penalty which is so contrary to the general sentiment, that except in cases marked by extreme malignity or some special aggravation rousing indignation against the offender, it could not be executed without shocking the public sense. Yet this is just what must be said of the penalty of death threatened by the existing law to the person who kills another, in what is called a fair duel—threatened but so rarely enforced, that it carries no terror with it, no terror at least of that which it threatens. It might be well worth a trial whether the certain expectation of punishment for culpable homicide by consent, the enforcement of which would surely be approved by the public mind, would not be more efficacious in preventing duels in which life is risked, than the present empty denunciation of the law. The penalty proposed is imprisonment of either description for a term which may extend to fourteen years, and must not be less than two years, which may be combined with fine at discretion.

It is probable that the authors of the Code were led to distinguish this form of voluntary culpable homicide by the consideration of the case stated in the first Illustration *(a)*, of a Hindoo widow who with her own consent has been burned with the corpse of her husband. They were obliged to provide for this case which was already the subject of penal enactments in the Regulations for the Company's Courts. They found that 'the burning of a Hindoo widow by her own consent, though it is now, as it ought to be, an offence by the Regulations of every Presidency, is in no Presidency punished as murder.' By Regulation XVII of 1829 of the Bengal Code copied exactly in Regulation I of 1830 of Madras, and followed substantially in Regulation XVI of 1830 of Bombay, the offence is declared to be 'culpable homicide' punishable in the Presidencies of Bengal and Madras by fine, or by imprisonment, or by both fine and imprisonment at the discretion of the Court, and in the same manner, except with a limitation of imprisonment to ten years, in the Presidency of Bombay. This is not a case of 'extraordinary local superstition' as Mr. Norton suggests, but a matter of national concern, affecting a whole people for which the Penal Code for India must legislate. The Commissioners had to consider whether they would rank this offence as murder, as falling within the definition thereof, or reduce it by a special exception to a lower grade of culpable homicide, following the existing law which had been enacted upon the most careful and solemn deliberation. They concluded that it ought not to be treated as murder. They had then to frame an exceptive definition, and the question would naturally arise whether the terms of the definition should be limited specifically to cases of Suttee, or be made general enough to comprehend other cases depending upon the same principle. This, we presume, was the process, the result we find in Clause 298, the terms of which are general, including all cases in which 'the person whose death is caused was above twelve years of age and suffers death or takes the risk of death, by his own choice.'"

After some conversation, Sir Charles Jackson's Motion was put and negatived.

SIR CHARLES JACKSON then moved for the omission of Illustration *(b)*.

THE CHAIRMAN supported the amendment, and said he thought that the retention of the Illustra-

tion might lead to the inference that the Legislature had in some measure justified the rite of Suttee.

The Motion was put and carried, and the Section as amended then passed.

Sections 3 and 4 were passed as they stood.

Section 5 was passed after an amendment.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council adjourned at 10 o'clock on the Motion of Sir Bartle Frere, till Thursday Morning, at 7 o'clock.

Thursday Morning, Sept. 20, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble C. Beadon,	A. Sconce, Esq.,
H. B. Harington, Esq,	and
	C. J. Erskine, Esq.

PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The India Penal Code," the Council resolved itself into a Committee for the further consideration of the Code.

Sections 6 to 18 of Chapter XVI were passed as they stood.

Section 19 related to the exposure and abandonment of a child under twelve years by its parent or a person having the care of it.

MR. SCONCE enquired whether twelve years was not too high a limit. The limit in the Section, as it originally stood, was five years.

THE CHAIRMAN explained that the alteration in question and the introduction of the new Illustrations in Sections 9 and 10 were made by the Select Committee in consequence of some papers received from the Government of Bengal, whilst the Code was under consideration. These papers referred to a superstitious custom which appeared to be rather prevalent of abandoning children in the Soonderbuns. The following is one of the cases as mentioned by the Magistrate of the 24-Pergunnahs :—

"I find that, in April 1853, a case somewhat similar to that at Jessore was brought before this Court. One Kooran, a native of a village in the South West part of Kishennuggur, had two sons. The elder died. The other being grievously sick, Kooran made a vow that should his child recover and be spared to the age of ten, he would then dedicate him to the Almighty, by turning him loose in the Soonderbuns in order to his becoming a '*bunbash*.' Kooran had come all the way to Balleaghatta with his boy Panchoo aged ten, and had there hired a boat to convey them to the Soonderbuns, when they were arrested by the Police and sent before the Magistrate. My predecessor apparently doubted the boy being Kooran's son. Investigation by the Nuddea Police however proved the truth of Kooran's statements. But the boy's mother declared that there had never been any intention of *abandoning* the lad. He was merely to have been let loose for a few minutes, in fulfilment of the strict letter of the vow, and then taken into the boat and brought safely home again. Kooran was discharged, having been previously warned that, if he abandoned the lad in the Soonderbuns, and thus (as was probable) caused death, he would incur the penalty for wilful murder. The Magistrate of Nuddea was requested to direct the Police to look after the boy occasionally, and to report if he was absent at any time."

The Section was passed after the insertion of the word "wholly" before the word "abandoning" on the Motion of the Chairman.

Section 20 was passed as it stood,

Section 21 was passed after a verbal amendment.

Sections 22 to 29 were passed as they stood.

Section 30 (relating to the administering of poison or drugs) was a new Section proposed by the Select Committee who left a blank for the punishment.

Several amendments were carried on the Motion of the Chairman which made the Section stand as follows :—

"Whoever administers to, or causes to be taken by any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause

hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Sections 31 to 36 were passed as they stood.

Section 37 provided for imprisonment of either description extending to two years, or fine extending to one thousand Rupees, or both, as the punishment for causing grievous hurt on grave and sudden provocation.

THE CHAIRMAN said, two years' imprisonment seemed to him to be a very inadequate punishment for the offence provided against by this Section, which carried out the same principle on which murder committed under provocation was reduced to culpable homicide. The punishment for causing grievous hurt without provocation was seven years' imprisonment if done without a deadly weapon, or transportation for life if done with a deadly weapon. If therefore a man was liable to be punished with transportation for life or imprisonment for seven years for causing grievous hurt without any provocation, it appeared to him (the Chairman) that two years was too great a mitigation for the same offence committed under grave and sudden provocation. He should move the substitution of "four years" for "two years."

MR. SCONCE said, it appeared to him that the same inconsistency occurred in Section 9, which proposed to punish an attempt to murder with imprisonment for ten years only.

THE CHAIRMAN explained that Section 9 provided ten years' imprisonment for an attempt to murder where no hurt was caused; or if hurt was caused, the offender was liable to transportation for life.

THE CHAIRMAN'S amendment in Section 37 was then put and carried, and the Section as amended was passed.

Sections 38 to 51 were passed as they stood.

Section 52 defined what committing an assault was.

THE CHAIRMAN said, this Section was in substitution for the Section in the Original Code defining what was meant by the use of Criminal force. But when the Chapter of offences against the Public Tranquillity was under the consideration of the Committee, the words "Criminal force" and "show of Criminal force" were inserted in the Section which declared under what circumstances an assembly of five or more persons was to be designated as an unlawful assembly. But as there was now no Section which defined what Criminal force was, he proposed to restore the Section as it was originally printed.

Agreed to

Sections 53 and 54 were passed after amendments.

Sections 55 to 60 were passed after verbal amendments.

Section 61 was omitted as unnecessary, except as to the Explanation which was passed after a verbal amendment; and the heading "Of Assault" was restored to "Of Criminal Force and Assault," as it originally stood

Section 62 was passed as it stood.

Section 63 was passed after an amendment.

Section 64 provided as follows:—

"Whoever takes or entices any minor under fourteen years of age, or any person of unsound mind, out of the keeping of his lawful guardian without the consent of such guardian, is said to kidnap the person from lawful guardianship."

THE CHAIRMAN said, to make this Section consistent with the 9th Geo. IV c. 74 which provided sixteen years for a female, it would be necessary to make in the Section an alteration to that effect. He therefore proposed to omit the Section and to substitute the following new Section:—

"Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind without the consent of such guardian,

is said to kidnap such minor or person from lawful guardianship."

MR. SCONCE said, the Section as proposed to be amended would apply to the case of a married female enticed away for the purpose of adultery. He had no objection to its application to such cases, but it struck him as introducing a great novelty.

THE CHAIRMAN saw no reason why the Section should not be applicable to the kidnapping of married females.

After some further conversation, the Section was passed with the addition of the following Explanation on the Motion of THE CHAIRMAN:

"The words 'lawful guardian' in this Section include any person lawfully entrusted with the care or custody of such minor or other person."

Section 65 was passed as it stood.

Section 66 prescribed the punishment for "whoever kidnaps any person from British India or from lawful guardianship."

THE CHAIRMAN proposed to insert the words "or abducts" after the word "kidnaps."

MR. SCONCE thought that the amendment would make the Section too general. It might be held to be applicable to the case of a child enticed away from his father's house across a street.

After some discussion the consideration of the Section was postponed, and the Council resumed its sitting.

UNIVERSITIES.

SIR BARTLE FRERE presented the Report of the Select Committee on the Bill "for giving to the Universities of Calcutta, Madras, and Bombay, the power of conferring degrees in addition to those mentioned in Acts II, XXII, and XXVII of 1857."

The Council adjourned.

Saturday, September 22, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq.,
Hon'ble C. Beadon,	Hon'ble Sir C. R. M. Jackson,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	C. J. Erskine, Esq.

RECOVERY OF RENTS (BENGAL.)

THE CLERK presented to the Council a Petition signed by one Doyal Chand Ghose, of Nuddea, concerning Section XXX Act X of 1859 (to amend the law relating to the recovery of Rents in the Presidency of Fort William in Bengal), and observed that a Bill had already been brought in on the subject of the prayer contained in the Petition.

THE CLERK also presented a Petition from the Indigo Planters' Association, praying for the repeal or alteration of the same Act.

MR. SCONCE moved that the petition be printed.

Agreed to.

PENAL CODE.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding copy of a letter from the Secretary to the Government of the North-Western Provinces on the subject of the translation of the Indian Penal Code into Hindoostanee.

EMIGRATION TO THE FRENCH COLONIES.

MR BEADON presented the Report of the Select Committee on the Bill "to authorize and regulate the Emigration of Native laborers to the French Colonies."

LICENSING OF STAGE CARRIAGES.

MR. HARINGTON in moving the first reading of a Bill "for licensing and regulating Stage Carriages," said he would preface his statement of the

object and reasons of this Bill, by remarking that the Bill was introduced in the interests of humanity. For some time past great complaints had been made of the excessive cruelties practised on the horses—he should more correctly style them the diminutive ponies—which were employed to draw the heavy and generally overladen carriages of the various dawk Companies on their long journeys, and he had again and again been asked and urged to introduce a Bill for regulating those carriages in order to put a stop to the cruelties complained of. A disinclination to adopt any measure which might interfere with the convenience of travellers in a country in which, except on railways and in the river steamers, a journey was always more or less a series of discomforts, difficulties, and vexatious annoyances, and which might, at the same time, have the effect of diminishing the profits of the dawk Companies and of throwing obstacles in the way of their carrying on their business in a satisfactory manner, in so far as the public was concerned, had hitherto deterred him from proposing any legislation of the nature desired, and here he felt that it was only an act of justice to the proprietors and managers of the various dawk Companies, particularly those of the longest standing, that he should declare his opinion that the Indian public was under great obligations to them for the energy and spirit which they had displayed in establishing those Companies, for their unremitting exertions to promote in every way in their power the convenience of those who travelled by their carriages, and for the immense improvements which, amidst very great difficulties, they had been the means of introducing in inland travelling in this country. He was sure that all who had had the same experience as himself in travelling in India, whether by palanqueen or carriage dawk, would heartily concur in what he had just stated as to the benefits which had been conferred on the Indian community by the various dawk Companies. But the complaints to which he had referred had lately been reiterated from various quarters and they had come before him in such a form that, believing them to be well founded, he considered it to be his duty as a Member of this Legislature to take notice of them and to propose recourse to what appeared to be the only effectual way of putting a stop to the practices complained of. He had accordingly, with the aid of the learned Clerk of the Council, prepared the Bill, of which he should presently move the first reading. Perhaps he could not better describe to the Council the state of things which this Bill was intended to meet than by reading an Extract from a letter which he had lately received from the Magistrate of one of the largest stations in the North-Western Provinces. The writer said :—

"I beg to bring to your notice the frightful cruelty practised on their horses by the various dawk Companies. Scarcely a day passes but a horse dies in harness, being kept on his legs to the last merely by the severest flogging They are generally galled on both shoulders, besides having deep wounds in the withers. Many of them are driven four, five and even six trips a day when more dawks are laid than the Company may have horses for. The carriages are overladen to such an extent that four horses would not be too many to draw the load, instead of the undersized tattoo generally used. In one Company's carriages as many as ten passengers, and sometimes more, besides the coachman, are packed, the whole being dragged by one small pony. It is a disgrace that such a state of affairs is allowed to exist, and I think it would be right for Government to interfere."

An Editorial article on the same subject had appeared within the last few days in one of the Mofussil newspapers, which had a considerable circulation, from which, with the permission of the Council, he would also read an Extract. It would be seen that this article told the same tale as the letter of which he had just read a part. The Editor of the paper, he might add, was certainly not likely to have put forward a statement of this kind until he had fully satisfied himself of its truth. The article said :—

"No one who has, at any time, travelled by any of the numerous Horse Dawks which convey passengers to and fro, on the Grand Trunk Road, can have failed to have been particularly struck with the size, shape, or condition of the

cattle which are employed in the carriages. The size, indeed, may have caused astonishment, in one way. To see an animal about the height of a grasscutter's tattoo deliberately harnessed within shafts 'a world too wide' for his shrunken flanks, and to realize the fact that the vehicle, loaded with husband, wife, children, and servants, to say nothing of coachman and syce and a pyramid of luggage, move onwards at a pace beyond a walk, *must* have excited the wonder of many a traveller. The fertility of resource on the part of attendant natives, in subjugating the occasionally refractory quadruped, cannot fail to have called forth the admiration of those in particular, who appreciate the *mildness* of the native character.

We spoke above of the dawk horse's shape. This may be said to vary with the humour of the Jehu, who handles the ribbons —according to the number and direction of the blows inflicted; but we are bound to say that appearances are rarely improved by this manipulation, by the time that the end of a stage is reached. But if the state of their animals, at the best of times, is such as almost to put mankind to shame for being accessory to the cruelty practised on them; it is now—since the rise in the price of grain—so disgracefully bad as, in our opinion, to demand the interference of the legislature, and to call for something like Mr. Martin's Act. If that Act were at present in force in India, it would practically have the effect of stopping, for the time, the traffic of passengers on the Grand Trunk Road.

Now, there is no excuse for the disgustingly cruel treatment of these dawk horses, except the cupidity of dawk proprietors. The sums which are charged by them are *more* than remunerative. If proof be needed of the truth of this statement, it may be obtained by simply referring to the numbers of proprietors now existing, all thriving and some of them, if report be true, realizing fortunes. This is done at the expense of the suffering and dying cattle, and of the patient wearied traveller. The horses are *starved*, the passengers are delayed,—brutal beating and every description of cruelty, to which the practised hands of coachman and syce can resort, are now often practised in vain. The animal *cannot go*.

There is hardly a tattoo (we cannot call them horses) on the road that is not covered with sores. Some are, besides, lame, and others deformed, from the heavy and repeated blows which are inflicted on them. It is the commonest thing to find the whole breast an open raw; to see feet bleeding at the end of a stage from sandcracks; to—but why enlarge on the revolting details of these poor beasts' sufferings? Suffice it that to them is now added that of *starvation*—or at any rate a minimum of grain in their feed."

It must not be supposed that the proprietors and managers of the dawk Companies or their agents were alone answerable for the state of things represented in the papers which he had just read. He could not say that the managers of those companies or their agents were altogether blameless in the matter; far from it; but their faults, whatever they might be, were, to a great extent, faults of omission rather than of commission. The horses on which these horrid cruelties were practised were not the property of the Companies. They belonged for the most part to natives, who contracted to supply a certain number of horses at certain places or stages, for so much per month. The wear and tear upon the horses furnished under these contracts was so great that he was informed that most of them lived only a few months; sometimes, indeed, their existence as dawk horses might be counted by weeks. All that the contractors seemed to care for was how they might extract the greatest amount of profit out of the unfortunate animals supplied by them at the smallest outlay of money. He believed that there was an understanding or agreement between the managers of the Companies or their agents and the contractors that the horses provided by the latter should not run more than a certain number of miles, or go more than a certain number of stages during the twenty-four hours, but this part of the agreement was often disregarded, though here the fault was not, perhaps, so much that of the contractors as of the travellers whose irregularity or want of punctuality in commencing a journey or in keeping time on a journey frequently occasioned very great disturbance of arrangements in laying the dawks, and thus it happened that the poor horses were not limited to the number of stages contracted for. The Magistrate whose letter he had read, mentioned that sometimes they were driven as many as six trips a day, or about thirty miles. But he apprehended that this was not the only part of the cruelties complained of which was properly chargeable upon the travelling portion of the public. In these days of railways every other mode of travelling was found tediously slow, and if persons travelling by these dawk carriages did not actually urge on the drivers to a

rate of travelling much beyond what was proper, he feared that they made no attempts to check too fast driving, and that the sufferings of the poor horse were apt to be lost sight of in the eagerness to get to the end of the journey. Then again the amount of baggage put inside the carriage or piled up on the top in addition to the passenger or passengers and the coachman and syces, imposed an amount of draught upon the poor animal drawing the conveyance which rendered any motion, however slow, a miracle, and yet the carriages thus laden were often driven at the rate of eight or ten miles an hour, the horse being kept at a full gallop the whole stage. People, otherwise humane, allowed box after box to be put inside or outside the carriage without caring for the weight, and thus, in the words of the editorial article which he had read they had at last a carriage starting on its journey "loaded with husband, wife, children, and servants, to say nothing of coachman and syce and a pyramid of baggage, and to draw this load six miles, an animal about the height of a grasscutter's tattoo, deliberately harnessed within shafts a world too wide for his shrunken flanks." After what he had said he thought it must be admitted that there were three parties to the cruelties which this Bill was intended to prevent, all in a greater or less degree answerable or them, namely the managers of the dawk Companies and their agents, the contractors who provided the horses, and the public, and if any legislation which might be had recourse to for the purpose of putting a stop to these cruelties should subject each of those parties to some amount of inconvenience, he thought that they would have no just cause to complain. He trusted that he had said enough to justify the introduction of this Bill. He would now proceed briefly to notice the various provisions of the Bill, premising that it had been framed on the model of the English Stage Coach Act, with such modifications as were required to adapt that Act to this country.

Section I defined what was a stage carriage for the purposes of the Bill. Section II required such carriages to be licensed and pointed out by whom the license was to be granted. Section III stated the particulars which the license was to contain. Section IV mentioned the fee to be paid on the license and how long the license was to remain in force. Section V required every stage carriage to carry a license plate. Section VI prescribed a penalty for keeping or using a stage carriage not licensed. Section VII prescribed penalties for any contravention of the terms of the license. Section VIII prescribed a penalty for using a fictitious plate. Section IX prescribed a penalty for ill-treating a horse employed to draw a stage carriage. Section X stated under what circumstances a license might be revoked. Section XI prescribed a penalty when no license plate was carried. Section XII prescribed a penalty for misconduct on the part of the driver of a stage carriage. Section XIII stated under what circumstances a penalty might be recovered from the proprietors of the carriage. The remaining Sections showed how the summons to answer the complaint was to issue—how the penalties were to be recovered—and how informers might be rewarded.

In conclusion he would only observe that the object of the Bill in requiring that the stage carriages to which it applied should be licensed was not Revenue, nor was there the remotest desire to cause inconvenience or any injury either to the proprietors of the dawk Companies or to the travellers by the carriages of those Companies. The only end aimed at in the Bill was to afford legislative protection to a class of animals which were protected by law from cruelty at home and he believed in all other civilized countries. The Presidency Towns Police Acts contained provisions against cruelty to animals, and some legal provision for the protection beyond the limits of the Presidency Towns of the poor animals whose cause he had taken upon himself to plead, which should save them from the cruel treatment to which it was shown they were now subjected, seemed equally called for. That protection would, he trusted, be afforded

by the Bill of which he begged now to move the first reading.

The Bill was read a first time.

CUSTOMS DUTY ON PEPPER (COCHIN).

MR. FORBES moved the first reading of a Bill "to alter the Customs Duty on Pepper exported by sea from the British Port of Cochin." He said, the Council were aware that Travancore and Cochin were two native States on the western coast of the southern extremity of India, and that they were both tributaries of the British Government, Travancore paying annually eight lacs of Rupees, besides maintaining a local military force at an expense of one lac and a half, and Cochin paying annually two lacs of Rupees. A large proportion of the revenues of both of these States had always been derived from monopolies in the articles of pepper, tobacco, and salt, but as it was to the first only that the Bill which he was about to introduce was intended to apply, he would confine himself at present to it. All those who grew pepper in these States were obliged to deliver their produce to the Government at a fixed rate per candy, and the pepper was then sold by the Government to its own best advantage. The usual fruits of a faulty fiscal system had been borne by the monopoly. The people had become lawless and had engaged largely in a contraband trade; serious affrays between the smugglers and the preventive force had been constant, attended frequently with severe gun shot wounds, and not unfrequently with death; the public servants had become corrupt through the temptations offered to them to connive at illicit trade, and the public revenues, so far from benefiting, had actually decreased, partly from the oppression which the monopoly exercised on the ryot, and partly from the annual increase of smuggling that invariably accompanied such a system as he had described. From a report submitted to the Government of Madras by the Resident, it appeared that the average revenue derived from the pepper monopoly in Travancore from 1822 to 1836 was 1,21,000 Rupees, while the average from 1849 to 1859 was only 1,05,000 Rupees, and this result of a Government monopoly was brought forcibly into view by a comparison of it with the result of the free system in force in the adjoining British District of Malabar. Malabar was of about the same extent as Travancore, and both were equally well adapted to the growth of the pepper vine, if any thing the advantage was on the side of Travancore; but while, as he had first said, the result of a Government monopoly in Travancore had been an actual decrease of produce in the past thirty-seven years, in Malabar, where there was perfect freedom of cultivation and where there was no restriction on the disposal of produce, the produce, which in 1808 was about 5000 candies, in 1859 was 18,600 candies.

The Government of Madras and the Government of India had for some years pressed upon the rulers of Travancore and Cochin a reform of their fiscal system, and the advice of the able Officer who now filled the Resident's office, had at length induced the Rajahs to take the first step, and to consent to an abolition of the present monopoly of pepper, which was the one that bore most injuriously on the country, and was the least beneficial to the State.

The proposition was to substitute for the present Government monopoly an export duty of fifteen Rupees a candy, or twenty per cent *ad valorem* according to present value on all pepper exported by sea or land from Travancore or Cochin, but this measure could not be successful without aid from the British Government, and it was to enable the Government to afford this aid, that the present application for an Act was now made to the Council.

The British Port of Cochin was a small isolated spot twenty miles distant from any other British possession and entirely surrounded on the land side by the Territories of Travancore and Cochin. The Port formed the natural outlet for the produce of those States, with the greater part of which it had communication by means of extensive natural backwaters. Its posi-

tion at the Port of Travancore and Cochin was so favorable, that added to the advantages it possessed, in common with other English Ports, of free trade with other Ports of India, while Travancore was treated as a Foreign country, the pepper produced in Travancore and Cochin was constantly smuggled across the Frontier, so that the export from Cochin of that article, solely the produce of these two States, had increased from 160 candies to upwards of 4000 candies; and it was obvious that if, while an *ad valorem* export duty of twenty per cent were demanded at the Ports in Travancore, pepper smuggled over the Frontier could be exported from Cochin under Act X of 1860 at a duty of three per cent, the evils of the contraband trade which it was so desirable to put an end to, would be in as full force as ever, and the Travancore State would have forfeited a large amount of Revenue without obtaining any advantage.

It was proposed by this Bill therefore to authorize the collection at the British Port of Cochin, on behalf of the States of Travancore and Cochin, of a duty of fifteen Rupees a candy on all pepper exported, excepting on such pepper as might have been originally imported from any British possession, and a Section was added under which the Government of Madras would have to account to these two States for all the duty that might be collected after deducting the expenses of collection.

Considering the very peculiar state of the case which he had attempted to describe to the Council, how desirable it was that the pepper monopoly should be abolished, and how impossible it was to abolish it without a sacrifice of revenue which the Tributary States could not afford, unless the British Government consented to secure those States against loss, by collecting, on their behalf, a duty on the produce of their country exported at a British Port situated in the centre of their country and smuggling to which Port had unusual facilities—considering also that British interests would be in no way affected, or the integrity of our customs system be in any way interfered with—he was sanguine that the Council would give its sanction to a measure which had the approval of the Executive Government, and from which great benefit to large classes of the community might be expected certainly to result.

He now moved that the Bill be read a first time.

The Bill was read a first time.

PAPER CURRENCY.

SIR BARTLE FRERE, in moving the second reading of the Bill "to provide for a Government Paper Currency" said that it would probably be in the recollection of the Council that on the last day we had the honor and pleasure of having among us our late colleague, Mr. Wilson, the Right Honorable Gentleman had stated his intention of moving on the following Saturday the second reading of his Currency Bill. It had pleased God, however, that that opportunity should not be afforded to him, and it was difficult to realise the extent of what we had lost when we found that it fell to inferior hands to deal with a measure so closely connected with the science of political economy and practical banking, of which their late colleague was so great a master. He had no doubt that, if we had had the privilege of hearing Mr. Wilson on the second reading of the Bill, we should have had a complete answer to every criticism on the great measure which he had proposed. He (Sir Bartle Frere) need not say that he could hardly attempt to supply what his Right Honorable friend would have laid before us. He could only say that, in obedience to the desire of the Government that the Bill should go forth to the public for the further criticism and comments of those able to offer them, he had purposely abstained from making any alterations in the Bill as printed by Mr. Wilson. He (Sir Bartle Frere) had deemed that it would be only respectful to Mr. Wilson's memory to allow the public to review the Bill as it had been brought in by the Right Honorable Gentleman. One cause of the delay in proceeding with the measure was the belief that Mr. Wilson might

have left some note of the alterations which he wished to make in the Bill, but after a prolonged search nothing had been found, save a note that the Bill should be read a second time. He (Sir Bartle Frere) need not tell the Council that the measure was one which, for a long time previous to Mr. Wilson's leaving England, had engaged the attention of all who had any knowledge of or connection with Indian finance. When Mr. Wilson sketched the main features of the measure he proposed to introduce, he went so fully into the subject, both in the speech which he delivered to this Council in March last, and in the Minute which was annexed to his speech, that it would be impossible to say anything on the principle of the Bill which would further elucidate that part of the question. It only remained to consider how far the Bill gave expression to those views. In the interim a Despatch had been received from the Secretary of State, generally approving of the measure shadowed forth in Mr. Wilson's Minute on the Currency question, and offering criticism on one or two points, which he (Sir Bartle Frere) was sure would receive the attention of the Select Committee to whom the Bill would be referred for consideration. Though it would be presumptuous on his part to attempt to defend any measure brought in by so great a master of political science, he thought he should be wanting in his duty to Government and to the many able men who had discussed this measure, if he omitted to acknowledge the very full and satisfactory criticism which this measure had elicited throughout India. In each of the Presidency towns, it had attracted the attention of the community which would be principally affected by it, and the result of their opinions had been published in various forms. Several pamphlets had been printed, which gave evidence not only of the importance of the measure, but also of the ability of those who criticised it. In one pamphlet, which might be considered as embodying the views of those in this city who were most disposed to criticise the measure, might be recognised the hand of a gentleman, who, he (Sir Bartle Frere) believed, was considered, not only in this country, but also in England, as a great authority on every subject connected with Banking; and while he (Sir Bartle Frere) could not agree with the author, the very full and able criticism to which he had subjected the measure had contributed materially to throw light on the subject as applied to India. There were a few points to which he (Sir Bartle Frere) would venture very briefly to advert, while there were others which it would be seen were provided for in the Bill as it now stood. He (Sir Bartle Frere) then referred to various objections in the pamphlet by *Scotus*, such as that it was "questionable whether it was the right and prerogative of the Crown to claim the exclusive privilege of creating or issuing Bank notes." This question had, he (Sir Bartle Frere) thought, been very fully decided by the voice of a majority of the mercantile community of this country, and in England, that no form of introducing this measure would suit the wishes of that community which did not proceed on the basis proposed by Mr. Wilson. So with regard to the question, how far it was wise and politic for the Government of India to assume the sole right of issue. In the papers lately received from Bombay, containing the Minutes of the Members of the Chamber of Commerce of that Presidency, the question had been very fully discussed and decided, he thought, as far as weight of argument went, in the same manner as it was decided by Mr. Wilson. But as regards the wisdom and policy of the measure, it must be remembered that the measure would proceed tentatively, first in the Presidency towns, and not in the remoter parts of the country till the soundness of the measure has been fully tested by experience. The pamphlet arrayed a large number of authorities in favor of the view which the writer took on this question and adverse to the view taken by Mr. Wilson. With regard to these, high as the authorities were, there was one point which should not be forgotten in judging of their weight, and that was, that many, if not most,

of them referred to inconvertible paper issue by Government. There was, of course, no intention on the part of Government of making such an issue, and there could be no analogy between such an issue and the proposed convertible paper. There was a further question, which was very ably argued in the pamphlet, with regard to that part of Mr. Wilson's plan which proposed that a certain amount of the sums received for the notes should be reserved in silver, and the remainder invested in Government Securities. He (Sir Bartle Frere) should come to that subject when speaking of the Despatch from the Secretary of State.

There was another objection taken by this writer in which he stated at page 22 :—

"Mr. Wilson may call it by what name he chooses, but I do not hesitate to affirm that with the power of *a legal* tender attaching to such an issue, and pushed out by the Government machinery just described, it is to all intents and purposes a *compulsory—a forced issue*, and as such liable to depreciation."

This was a question which could hardly be decided otherwise than by experiment. How much of the Government paper would keep out in circulation, without depreciation, could only be ascertained by trial. But of one thing he (Sir Bartle Frere) was confident, there would be no compulsion, direct or indirect, and the experiment would be made gradually, and so as to leave the paper as entirely as possible to make its own way to public confidence.

Another pamphlet, which was also entitled to be noticed by the ability and general fairness with which the question had been argued, came from the Madras Presidency, and embodied the views of one of the ablest authorities on Banking in that Presidency. It was principally directed to the question, whether the object which Mr. Wilson had in view could be best carried out by Government agency or by private agency. On this point the general view taken by the mercantile community was, he thought, in favor of the plan proposed by Mr. Wilson. He (Sir Bartle Frere) would also draw attention to the able papers submitted by the Chamber of Commerce at Bombay to the Government, for which the best thanks of the Government were due to them, and which deserved the attentive consideration of the Council; and he thought he might confidently appeal to them whether the balance of argument was not on the side of those who advocated the measure proposed by Mr. Wilson. He would only further acknowledge the ability and fairness of the criticisms which had from time to time appeared in the newspapers at all the three Presidencies. The question had been discussed with an amount of argument and temper which afforded a good guarantee for feeling that, on this subject at all events, we had the benefit of a candid and enlightened public opinion.

It remained for him to offer a few observations upon the Despatch from the Secretary of State, which had already been laid before the Council. There might, he thought, be some necessity for altering the Bill in Committee in accordance with the instructions contained in that Despatch; but, as he had already remarked, he would not anticipate the action of the Committee in that respect, but would leave them to take up the Bill as it was left by Mr. Wilson. He would only say a few words with regard to the 15th and following paragraphs of the Despatch. The part of the Bill to which those paragraphs related was Section X, which provided as follows :—

"The Governor-General in Council shall determine from time to time the amount to be retained and secured in silver bullion and coin, as a reserve to pay the said promissory notes; provided always that such reserve shall in no case be less than one-third of the amount to be passed in the notes in circulation."

Upon this point the 15th paragraph of the Secretary of State's Despatch stated as follows :—

"In this country the smallest amount of notes required had been ascertained by long experience; but what that quantity may be in India can only be ascertained in like manner, and as it is impossible at present to say what the minimum amount of notes in India will

be, the proceedings for determining this point must necessarily be tentative and experimental."

The Secretary of State went on to say:—

"Probably the amount of their issues (that is, the issues of the Bank of Bengal) may be safely assumed as the minimum note circulation for Calcutta and the neighboring Districts. This amount might therefore be issued in the first instance, Government Securities to the same amount being held by the Currency Commissioners. There appears to be no reason to doubt that notes to that amount would always remain in circulation under ordinary circumstances. All notes beyond this amount are to be issued only in exchange for coin or bullion, which will be held in reserve by the Currency Commissioners."

And then again in the 18th paragraph he said:—

"As the circulation of notes is extended beyond the immediate neighborhood of Calcutta (and the advantages to be derived from the system will be very incomplete until this is done,) a much larger amount of notes will be required; and, under these circumstances, the limit of the fixed amount may be raised. But as this should only be done after full experience of the working of the system, I think it better that any change should be made, either by legislative enactment at the time, or by an order of Government, with the sanction of the Secretary of State in Council, to be published in the Gazette, powers for doing this being contained in the Act which may be passed on the subject."

Now it had been supposed that there was something conflicting between the 10th Section of the Bill and the following proviso on the one hand, and the instructions of the Secretary of State on the other. It appeared to him (Sir Bartle Frere), however, that there was no inconsistency whatever in the matter, and he ventured to think that such an impression would be removed when he explained the process intended to be carried out. It was proposed by the Bill to fix one-third of the total amount of notes in circulation as the minimum limit of the silver bullion or coin which should, under all circumstances, be kept as a reserve to cash notes. Of the silver received for the other two-thirds of the total note circulation, the Commissioners would, under the orders of the Government of India, invest a portion in the purchase of Government Securities under Section XI of the Bill. In practice the minimum limit of cash retained in hand would be much greater than what was allowed by the Bill, and would be regulated by the amount of notes which it was shown by experience here had been kept out in circulation even under the least favorable circumstances. The process would be something of this sort. The minimum of note circulation in times past of great panic, when note circulation was at its lowest, might be safely taken to be the minimum below which it was impossible that the note circulation would ever fall in time to come. For instance, one had no reason to fear in future years a more severe panic than that which occurred during and subsequent to the mutiny, and one might safely take what was the smallest amount of notes in circulation in 1857 and 1858, when confidence was at the lowest, as affording a safe index of what it would be prudent to fix as the maximum amount which, in the first instance, the Commissioners should be allowed to invest in Government Securities. Let us suppose that the returns of note circulation in the past five years showed the minimum note circulation to have been one crore of Rupees or one million sterling, and that too only in Calcutta and its neighborhood in a time of great panic in the community generally. This was an amount of circulation which might safely be assumed to be one below which the note circulation would never fall, and that must be taken in the first instance as the practical limit to the sum which the Commissioners should be allowed to invest in Government Securities. Suppose the total note circulation to be six millions, the Bill required two millions to be kept in cash, leaving four millions as the legal limit to the sum which could be invested in Government Securities. But under the limit fixed by the Secretary of State, such investment in Government Securities would be restricted to the minimum of note circulation in times past, and therefore the power given by the Act would not be used further than to invest one million in Government

Securities. He (Sir Bartle Frere) was not sure if he had made the distinction clear, but his impression was that there would be no inconsistency between the legal limit proposed to be fixed in the 10th Section of the Bill, and the practical limit which the Secretary of State proposed to fix in the 18th paragraph of his De patch.

Another objection to the measure which had repeatedly been insisted upon was with respect to the provision in Section XV, enabling the Commissioners to sell and dispose of Government Securities. It had been said that, in any time of pressure, when silver coin was required, Government would be ob iged to go into the money market and sell Securities under the Act, and that, in consequence of the general panic, the Securities would become depreciated in value or unsaleable. But he thought that, if the safeguards proposed by the Secretary of State were carefully observed, and no greater amount invested in Government Securities, it could practically never happen that the Government would have to go into the market to sell Securiti s to provide coin or bullion. The power was necessarily given to buy and to sell, but he knew, from what he heard Mr. Wilson state repeatedly on the subject, that it was intended to tie the hands of the Commission in investing in Government Securities by fixing such a limit as would practically prevent those Securities from going into the market under any circumstances.

With these remarks, he begged to move the second reading of the Bill.

MR. SCONCE said, he was very sensible of the sad feelings under which the Council was asked to consider the principle of this Bill. To him it seemed that we were almost a second time come to bury Mr. Wilson. So far as his feelings went, time had not in any degree lessened the loss which we first experienced. It would not become him, and certainly he had no intention to offer to the Council any encomium on Mr. Wilson. But he was free to say that he dissented in what he considered substantial points from several important provisions of this Bill, and entertaining those feelings of dissent, it was with the greatest reluctance he rose at all, and he felt the greater doubt that what he might say would be worthy the attention of the Council. There was one point on which he fully agreed with Mr. Wilson, and that was the desirability of introducing a Paper Currency. What he understood to be the main ground on which Mr. Wilson proposed to act was, that the public should have the benefit of a more portable medium of exchange as a substitute for the present bulky and inconvenient silver coinage. In that sense he entirely adopted the principle of the Bill, and if he looked to the incidental advantages expected to be derived from the same measure, it was important to distinguish the operation of one from the operation of the other. It had been often said that it was a saving of capital to substitute a Paper Currency for Bullion Currency. He looked at the matter simply in the sense of getting rid of any indefinitely large amount of currency now in circulation. If the object were to displace silver for the purpose of turning it into capital, that object was opposed to, and might be incompatible with, the principle on which the creation of a Paper Currency was primarily based, that the public convenience should be considered in being supplied with a easily portable medium of exchange. In considering the one they were apt to overlook the other: but each object was distinct, and in issuing paper with a large and unlimited idea of creating additional capital, they would transgress the principle with which they started that the issue should correspond with the amount that would be acceptable to the people as a circulating medium. It might be said arbitrarily that out of all the Silver Currency of the country, perhaps fifty millions or possibly twenty millions would be displaced, for obviously a large operation was contemplated; but in that case he must say that the issue of paper would not be, as it ought to be, determined by the convenience and wants of the community. The Council would

recollect that Mr. Wilson mentioned that, since the new coinage had been introduced twenty-five years ago, one hundred crores of Rupees had been put into circulation, and as it was the object of this Bill largely to displace silver, it seemed to him important to consider more exactly the amount held by the people. Supposing then the currency in the hands of the people to correspond with the coinage, namely, one hundred crores, and taking in round numbers the population of India to be one hundred and fifty millions, the circulation would amount to about six Rupees a head. It happened that some years ago he looked into this matter regarding five inland districts. At the time he instituted those enquiries ten years had elapsed since the introduction of the new currency. It seemed to him that by ascertaining the amount of the old coinage withdrawn from circulation and transmitted to the Mint to be recoined, a fair criterion would be found of the currency required by the community, and accordingly he found that in the five districts to which he referred, the circulation had been on an average less than three Rupees a head. In the first six years almost the whole Sicca Currency had been exhausted; for that period the coin withdrawn was two Rupees and one-third a head; and during the next four years the amount withdrawn was only about one-third of a Rupee more. In the whole ten years, as he had said, the total coin withdrawn from circulation did not amount to three Rupees for each person of the population. If we now supposed the coinage of one hundred crores issued to be in circulation, it would give six Rupees for each person. But it could not be so. The original issue was subject to much deduction. Much had been absorbed by Native States, much had gone beyond our Frontier to Affghanistan, and elsewhere; much had been exported. For the five years ending 1858-59, he found that the treasure exported, which he took to be coined money, was close upon ten crores. And he thought, upon the whole, the Council might safely conclude that the circulation did not exceed five Rupees a head. He spoke upon the supposition that it had been considered desirable to reduce our coin circulation, and not only reduce it but reduce it largely.

But now he would ask what was the amount of Bullion Currency in use in England? He found from the Report of the Committee upon the Bank Acts, that in 1857 the whole gold circulation amounted to fifty millions. It had increased to thirty per cent. since 1851. During the last three years the circulation was considerably larger, according to an article in the last *Edinburgh Review*, which stated that the circulation had increased since 1851 to forty per cent. Now, assuming the population in England to be sixty millions, that would give £2 a head. But £2 is equal to twenty Rupees. So that, while the currency maintained in England amounts to twenty Rupees a head, the currency which we now enjoy, and which it is proposed to reduce, does not exceed five Rupees a head. His purpose in making these remarks was to show that, if in England where there was a Gold Currency, it was not considered expedient to reduce it lower than £2 a head: we should hesitate in going on a different principle here. He was not arguing against a Paper Currency, but only against measures which would lead to its immoderate issue. He wished to speak with as much reserve as possible on this matter. It was a subject with which he professed he could not say he was practically conversant, but he thought it necessary to say that this Bill materially departed from the principle which, as he understood, regulated the issues of the Bank of England by the Act of 1845. The principle proposed to be ordinarily followed was that one-third of the notes issued should be secured in coin, and two-thirds in public securities. His Honorable friend (Sir Bartle Frere) had said that whether that was the principle of the Bill or not, it would not be the course in practice, or that it would not practically be pushed to that extent. He (Mr. Sconce) however would speak of the principle embodied in the Bill,

and that was to ensure that there should be one-third coin and two-thirds in securities. Whatever rule we adopted in the Bill, we must be prepared for its being put in force. It seemed to him that the provisions of the 10th Section of this Bill were quite opposed to the principle that regulated the proceedings of the Bank of England Here the rule of covering our issues in paper by two-thirds of the amount in securities was not confined to the first issue. The same rule was progressive with all the paper put out. As the circulation increased, two-thirds would be represented by public stock. Supposing the circulation to amount to sixty crores, that would give twenty crores in coin, and forty in securities; that he must say was not a proper principle. Of the notes issued by the Bank of England, as Honorable Members knew, fourteen millions were issued as was said upon securities But when Sir Robert Peel passed his Bank Act in 1845, the Bank of England did not, by virtue of that Act, go into the market, and buy securities. Sir Robert Peel's limit of fourteen millions was assumed and determined by a circulation to which the country had already been accustomed. For nearly one hundred and fifty years the Bank had issued notes, and out of the fourteen millions, up to which the paper circulation had been secured, eleven millions in the course of many years had been lent to the Government, and it was upon the faith of this debt due by the Government and not upon the presumption that the Bank would go into the market to purchase securities, that the Act was framed. But besides that, it was fixed that the securities should not in any way exceed fourteen millions, and whatever the amount of notes it would be convenient to the public to take over and above the fourteen millions, there should be one pound in gold for every pound issued in paper. Now let us compare that principle with the operation of the one suggested in the present Bill. He had supposed a circulation throughout India of sixty crores, of which twenty crores would be represented by coin, and forty crores by promissory notes. But under the Act which regulated the circulation of the Bank of England, an issue of notes to the same amount would be protected by fourteen millions of securities and forty-six millions in coin. In the two cases there was a difference between forty-six millions and twenty millions; an immense difference, which justified him in saying that the present Bill was not based upon the principles of the Bank Charter Act. With these views, therefore, he (Mr. Sconce) entertained great objections in adopting the proposal of Section X of the Bill, that one-third should be reserved in coin and two-thirds in paper.

As to the process by which a large portion of our Bullion Currency was to be displaced by paper, he thought it merited the deepest consideration. He supposed it would operate in this way. Any Bank of this city might deliver three lakhs in coin and receive the same sum in notes. Then the Currency Commissioners retaining one lakh in coin, would purchase securities with two lakhs. The immediate result therefore would be that, in place of a circulation of three lakhs, there would be a circulation of five lakhs, of which three consisted of notes and two of coin. But obviously this operation involved a double process, which obscured the actual nature of the transaction. The real transaction was, upon every Rupee kept by the issue department, to issue three Rupees in notes. In the case supposed, the same Bank which exchanged coin for notes may have sold securities to the Commissioners; and he thought the Council must admit that it would have come to the same thing if, upon the Bank tendering one lakh in coin for one lakh in notes, the Commissioners should purchase two lakhs of securities with two lakhs in notes. The result was the same in both cases; for one lakh in coin, three lakhs in notes were issued, and the Bullion Currency in other respects remained as before.

He (Mr. Sconce) did not think so lightly as the Honorable Gentleman opposite (Sir Bartle Frere) did, as to the effect of the operation of Section XV

of the Bill, by which it was proposed to authorize the Commissioners to sell and dispose of the public securities. He thought that they might have authority to buy, but his objection was to their selling, and he did not see the Council could adopt that proposal. What was the state of the case? Suppose that securities were bought to any amount, say twenty lakhs for instance, and the Commissioner were pushed for money and wanted to sell out. The twenty lakhs of securities which the Commissioner held had not been purchased with his own money, but with the money of other people. With the money of other people the Commissioner had redeemed prematurely the public debt, and when the money was again wanted by those who had paid it in, it seemed to him to be a matter of obvious obligation that recourse should be had to the public treasury, and that the Commissioner should not go into the money market and run down, to the injury of the public, the market value of the public stock. Just conceive the effect of that. It would not be that the Commissioner wished to sell, but every body would wish to do the same. Thus a great quantity of paper would be brought into the market. At the time when every man's suspicion was excited, jealousy and alarm would be spread by the Commissioners going into the market with their paper; and, undoubtedly, by their appearance, the panic would be greatly aggravated. Now the remarks which he had made upon the power to dispose of securities in order to find funds to pay off notes were not peculiar to himself. He found the same opinion inculcated in the Despatch of the Secretary of State. Sir Charles Wood, as he understood, interdicted such dealing in securities, and in the 17th paragraph of the Despatch of the Right Honorable Gentleman, it was distinctly observed—

"that it should be provided that the cash balances in the Indian Treasuries should be available to meet any unforeseen demand for the payment of notes; and arrangements should also be made for establishing credits on the Collectors' treasuries in favor of the District Currency Commissioner for any difference between the amount of their issues, and the cash balances in their hands."

Here there was a clear intimation that notes should be converted on demand, if need be, with cash held in the public Treasury.

There was another matter to which he must ask the Council to excuse him for referring. He meant the amount of notes which was proposed to be issued as a legal tender. It began with five Rupees and ran up to one thousand Rupees, or any other amount which the Governor General in Council, with the sanction of the Secretary of State, might direct. He need not remind the Council that in England notes did not go below £5. Elsewhere notes went below £5; but they were not a legal tender, and that seemed to him to make all the difference [Mr. Sconce here quoted a passage from the examination of the Governor of the Bank of England before the Committee of the House of Commons in 1857.] Quoting from Mr. Levi's Annals of Legislation, he found it stated—

"The privileges of exclusive banking are now confined entirely to the issue of fourteen millions of notes upon sureties, and what is called the legal tender, which, however, is of no value to the Bank now, inasmuch as the amount is fixed, to which they can issue notes upon securities."

This seemed to him to be a remarkable statement, for it showed that the only Bank in the world, whose notes were legal tender, set no value upon the privilege. So long as the Bank had unlimited discretion to issue notes upon securities, the legal tender provision was of importance; but now that the excess issues of the Bank were represented by bullion, the circulation of the notes rested only upon the convenience felt by the public in using paper rather than gold.

It was doubtful, therefore, whether we should seek in that sense to have a compulsory legal tender, and whether, on the other hand, the preferable mode would not be to introduce a circulation without what is called a legal tender. He did not think there could be any doubt in the minds of the Council that

the best means of attracting the confidence of the public would be by Government allowing it to be received in the discharge of Government demands. He saw no objection to making notes of legal tender down to fifty Rupees; but he saw very great objection to making, without exception, notes of five and ten Rupees legal tender against the will of the people. His objection arose from the undoubted presumption that to put out notes would be to withdraw coin or bullion from circulation. The effect would be miserable. At any rate, if this were done, it should be with the ready acquiescence of the people. Suppose within any given tract of country or circle we had nine crores of Rupees. it was no small matter to put forward four and a half crores of paper. In the same place where four and a half crores of bullion were out, you put in paper to that extent, and thus withdraw so much bullion. Now the whole of the people in the tract referred to, who before had the use of nine crores, would pull on the four and a half crores of coin. A certain amount of Bullion Currency was indispensable for the lower classes of the people, and once you reduce the ordinary Bullion Currency by one-half, the consequence would be that all classes would seek a share of what was left, to the great misery of the humbler classes, to whom a copious circulation was breath and life.

Upon the whole, then, as to this Bill, he was perfectly prepared to support the introduction of a Paper Currency; but he must repeat what he had already said, that the convertibility of notes should be secured by the aid of the public Treasury. He had no objection to the Currency Commissioners from time to time, purchasing stock, but the amount so purchased should be much less than was proposed by the Bill. He had not had time to read the papers from the Bombay Mercantile community, that had only been circulated the evening before; but he was struck with the remark made by Mr. Angus, Manager of the Commercial Bank, regarding the amount to be invested in securities. The opinion expressed by Mr. Angus was not materially dissimilar from the course indicated in the quotation read by the Honorable Gentleman (Sir Bartle Frere), but Mr. Angus he thought, put the matter in a stronger light. Mr Angus observed—

"if the Commissioner be a prudent man, he will not invest a single rupee of that silver in Government securities, until seasons of prosperity and adversity have practically taught him that a certain amount of silver will remain in his box under all circumstances; then he may prudently invest a portion of what remained at the worst of times, and go on increasing his investments as experience shows him that the extending trade of the country and the increasing confidence of the public on his notes well warrant such operation; and, probably, at the expiry of ten or twelve years, he will feel himself justified in extending his investment to the full two-thirds of his issues."

He thought this principle was safe and indisputable, that out of the coin paid in exchange for notes, any sum that in the average of years lay unused and uncalled for in the hands of the Commissioners, might be devoted to the purchase of securities. This transaction he thought, should be declared to be in the name and for the advantage of the public. If on this occasion he might state the purpose to which he thought the purchase of securities should be destined, he would say it should be applied to the redemption of our national debt. He would limit the legal issue to twelve crores; of that sum he would suppose one-third to be invested in stock, that is four crores, which would give an annual interest of twenty lakhs, or in five years one crore. So that in the course of five years one crore of debt might be redeemed, a far better course, he thought, than by absorbing the interest for the general purposes of the State.

In conclusion, he desired it to be understood that his object in making these remarks was not to oppose the second reading of the Bill, but to indicate the changes that seemed to him essential before the Bill could become law.

Mr. FORBES said, he had no intention of offering any opposition to the second reading of this Bill, but he wished to guard himself from being

supposed to acquiesce in all its parts, because he voted, as he proposed to do, for the present motion that it be read a second time.

In the few remarks which he proposed now to make, he should travel over part of the same ground that had been already travelled over by the Honorable Member for Bengal; but as the circumstances of the Madras Presidency were such as to enable him to place his view before the Council with some force, he should trust to the usual indulgence of the Council in trespassing for a few minutes on their attention.

The part of the Bill, to which he would first refer, was that which made all notes, even of very small amount, a legal tender; while at the same time such notes could be cashed only at the head Office of the circle, which might be, and often would be, at a very great distance from the local Office of issue.

By Section VIII of the Bill, Bank Notes were to be cashed only at the head Office of the circle of issue or at the Presidency Town, but by Section XVII all payments made by Government might be made in Bank Notes; and in a memorandum on the proposed formation of circles for paper currency in India, put forth by Mr. Temple as Head Currency Commissioner, it was said distinctly that the Government would make all its payments in notes. On the same subject Mr. Wilson, in his speech of the 3rd March, said:—

"Now let us bear in mind that the proposal is, and we think that essential, that the notes are to be a legal tender in all transactions between man and man, that they are to be received at every Government Treasury for all demands of Government for revenue or other purposes, and that the system is to be general and to extend over the whole of India. It is essential that we should bear these conditions in mind."

And in another part of the same speech, the Right Honorable Gentleman added:—

"Our notes are to be a legal tender; they are to be received by every private person as well as by the Government in discharge of all ordinary claims."

Now such being the case, notes of the value of five Rupees would be a legal tender, and the Government being about to make all its payments in them, every Chuprassee on five Rupees a month, every soldier, every sepoy, would receive his pay in paper, and if we referred to Mr. Temple's exposition of the currency scheme, we should see what would be the consequence as regarded the convenience of the community. In that exposition it was laid down that the Madras circle should comprise ten districts, and one of them was 700 miles distant from the head Office; so that any one wishing to obtain cash for a five Rupee Note received in that district, without being subjected to the deduction for batta without which no soucar would ever cash a note, would have to travel 700 miles to the Presidency and 700 miles back again for the purpose. But allowing that this was an extreme case, that there was but one such, and that some arrangements might be made to diminish the size of this particular circle, the distances of almost all the other districts in the Madras circle offered practically quite as much difficulty to obtaining cash for a Note as would be the case in the district to which he had before referred. Setting aside that district, the next in order of distance was 498 miles from the head office, another was 365 miles, another was 285 miles, another 290, and another 166—and if we took the very nearest, and supposed that every one wishing to receive cash for a five Rupee Note would have to go only 166 miles out and the same distance home again, it was obvious that every one would be obliged to submit to a charge for batta from the soucar, and that no one would be able to obtain the full value of his Note. Therefore there would be a tax placed on all those receiving small Government salaries, the very parties whom we had very lately exempted from the operation of the income tax because we considered that their means were insufficient to bear the burden of the tax. He should therefore consider himself at liberty, when this Bill came before

them in Committee, to propose either that Notes under 50 Rupees in value should not be a legal tender, or that, if they were a legal tender, they should be cashed on demand at the local office from which they might have been issued.

The next point to which he wished to refer was the provision of Section IX that Notes should be issued for coin by local offices of issue, and the provision of Section XI that 2-3rds of the value paid for such Notes should be invested by the head Commissioner at the Presidency in public securities, which public securities should be retained by the head Commissioner, and by Section XV of the Bill were to be sold whenever there might be a pressure for coin in any office of issue. In Mr. Temple's exposition of the currency scheme it was said that the securities would be retained by the head office of Issue of each circle, but he concluded the Bill now before the Council was to be considered the orthodox text, and that it was upon it that they were to debate. Suppose the 2-3rds of the value of the paper issue made at Mirzapore to have been remitted to Calcutta and invested in public securities, and that there should be a run for cash on the Mirzapore office, how would the Chief Commissioner at the Presidency be able to remit to Mirzapore the value of the securities he held on account of the paper issue from the Office at that place, when he had realized their value by their sale in the Calcutta market. The pressure was in the Mofussil, the cash was at the Presidency, and it was not at all apparent to him how the pressure was to be instantaneously relieved —and if not relieved instantaneously relief would be of no avail—when the distance between the two places might be three or four hundred miles? But besides the difficulty which he had just referred to, there was an inconsistency between the Bill in respect to the sale of Government Securities and the Despatch of the Secretary of State to which reference had been made by the Honorable Member for Bengal, which he thought required explanation. Section XI of the Bill provided that the Commissioners at the Presidency Towns should invest in Government Securities the residue of the amount of the notes in circulation over and above the sums represented by the coin which they were required to retain as a reserve, and Section XV required the Commissioners to sell and dispose of these Securities whenever it might be necessary for the purpose of retaining and keeping up the reserve of coin which the Bill required. But in the 12th paragraph of the Secretary of State's Despatch of the 28th of March last he (Mr. Forbes) found the following words—

> "another of the duties of the Commissioner at Calcutta, as described in the Minute, is to purchase and sell public securities, to whatever extent should from time to time be deemed advisable, and which should be in conformity with the regulations laid down by law. These expressions may convey an impression, which I am well assured is not Mr. Wilson's meaning, that the Commissioners might become constantly buyers and sellers of Government Securities."

The Bill therefore provided for what the Secretary of State was convinced was not the intention of the Right Honorable Gentleman who introduced the Bill, and he (Mr. Forbes) was of opinion that the Council should have an explanation of the apparent great difference of opinion between the framer of the Bill and the Secretary of State.

Lastly, he wished to ask from the Honorable gentleman who had taken charge of this Bill, what was, after all, the very great security which the public was supposed to enjoy on the Bank notes issued by Government being secured by Government Securities? Mr. Wilson, in his speech on introducing this Bill, said:—"We must provide absolute and undoubted security for the payment of our notes," but to him (Mr. Forbes), as at present informed, it had always seemed that, to give what was ordinarily called Company's Paper as a security for Government Bank-notes, was very much the same thing as a man standing security for himself. Bank-notes were Government Promissory notes, and the securities were Government

Promissory Notes. If one was at a discount, so would the other be; if one was discredited by the public, so would be the other; and the proposed scheme was precisely the same as if a man asked the Bank of Bengal to make him a loan of a lac of Rupees and offered to be his own security. In England the case was wholly different. There the Bank was a separate corporation and apart from the Government, and its notes might very well be secured by the public securities of the British nation; but in this case the Government issued the Bank-notes and the Government gave its own Promissory Notes as a security; and as he had in vain asked for a satisfactory explanation of this point outside of this Council, he should be very glad if the Honorable Member who now moved the second reading would inform him upon it.

MR. HARINGTON said, his intention was to vote for the second reading of this Bill, but in giving that vote he did not suppose that the Honorable Member of Council, who had undertaken the charge of the Bill, would consider him as binding himself to all the details of the Bill or, indeed, to more than was set forth in the Preamble of the Bill, namely, that it was expedient to provide for the issue by the Government of India of Promissory Notes payable to bearer on demand, and to prescribe the mode of issuing and securing payment of the same. It was on this understanding that he should support the Motion now before the Council, reserving to himself the liberty, when the Bill should have been published for general information, and the opinions of the local authorities and the public at large should have been elicited upon it, to propose such alterations in the details of the Bill as might then appear to him desirable. The only part of the Bill to which he wished particularly to allude at the present time, as appearing urgently to call for modification, was that which declared that notes of the very low denomination of five and ten Rupees should be a valid tender in payment of any sum of money due by any person on all occasions whatsoever on which a tender of money could be legally made. This provision, which was contained in Section XVII of the Bill, had already been commented upon by the Honorable Members for Bengal and Madras, and he concurred generally in the views expressed by those Honorable Members on this part of the Bill. He had no hesitation in saying that, if this provision was maintained, it would be a constant source of grievous injury and loss to the poorest classes of traders and others whose pecuniary transactions rarely exceeded the sum of twenty Rupees, and those classes would therefore be peculiarly affected by the provision in question. The Honorable Member for Madras had noticed the immense extent of the circles of issue proposed for that Presidency, and the great difficulty which the holders of Government notes would consequently experience in obtaining their conversion at the place of issue. Although the circles of issue proposed for the part of the country which he (Mr. Harington) had the honor to represent, were not of the same extent as those proposed for Madras, they were still so large that the holders of notes of the smaller denominations, residing at any distance from the stations of issue in those circles, would generally find that the journey to the station of issue for the purpose of obtaining conversion of a note would cost more than the value of the note. What would be the consequence? Why the holder of the note would be obliged to have recourse to a money changer, and by paying him a sum of money as batta, obtain cash for his note minus the batta charged. In one of the expositions lately issued, as he understood, under the authority of Government, it was stated, if he recollected rightly, that any charge of the nature of that just mentioned would be strictly prohibited, and that any party making such charge for changing a note would be liable to severe punishment. He was happy to observe that no provision of the kind was contained in the Bill. Were such

a provision to be introduced, he believed that it could not be enforced, and he was sure that any attempt to enforce it would greatly increase the severity of that part of the Bill under consideration, by creating additional obstacles in the way of converting notes of the smaller denominations, and here he must remark that, looking to the great extent of the circles of issue proposed to be established, he did not find in the Bill before the Council the facilities which they had been led to expect for rendering the notes intended to be issued at all times easily and readily convertible into the coin which they represented. To afford to notes of the two lowest denominations the facilities of conversion which had been promised, those notes must either be made susceptible of conversion at every Collector's Treasury, or the proposed circles of issue must be very greatly reduced in size. But the difficulty which, as pointed out by the Honorable Member for Madras, would be experienced by the smaller classes of traders and others in obtaining conversion of any notes which they might be compelled to take in the course of their ordinary daily transactions, whether of trade or otherwise, and the heavy loss to which that conversion would often subject them, were not the only objections which he thought might fairly be urged to this part of the Bill. There was another and a greater evil with which he apprehended not only the classes to which he had particularly alluded, but also classes above them, would have to contend. He thought there could be no doubt that, as soon as this Bill passed into law, forged or counterfeit notes would make their appearance in large numbers in all parts of the country. How, he would ask, was a poor ignorant native in the interior of the country to know whether a note was forged or not? The greater part would not be able even to read the inscription on the note, much less to form any opinion as to the character of the note. With respect to the water-mark which they were told would be plain and visible to the eye of the most unlettered person, he ventured to say that out of the Presidency Towns very few natives would be able to distinguish that mark. A further and a very great difficulty would often be experienced in ascertaining whether a note, tendered in payment of a sum of money due, belonged to the circle of issue in which the tender was made, or to some other circle which might be in a different Presidency. He was not opposed to the issue by Government of notes for five or ten Rupees. On the contrary; but, at first, he would not make them a legal tender. By all means let notes of these denominations be issued, but let the people take them or not as they pleased. He had heard it remarked that, unless notes of the lower denominations were constituted a legal tender, they would never get into circulation. On this remark the only observation he would make was that, if it was well founded, it seemed to him to furnish a very strong argument against making such notes a legal tender as it clearly shewed that the people did not require them and would rather not have them, and if such was the feeling of the country, it would be in vain to have recourse to compulsion with any hope of benefit accruing. And here he could not refrain from noticing what was stated by their late lamented colleague the Right Honorable Mr. Wilson at the time he introduced this Bill. The remarks had reference to the state of the law in other countries on the point now under discussion. The Right Honorable Gentleman observed—

"With one exception I know of no Bank whose issues of notes are a legal tender. The Banks in Scotland all issue notes, but they are not a legal tender. The notes of the English and Irish Banks are not a legal tender. The notes of none of the American Banks are a legal tender. The notes even of the Bank of France are not a legal tender."

A little farther on in the same able speech, the Right Honorable Gentleman mentioned that the lowest denomination of notes in the United States was one dollar or above 4*s.* 2*d.*; that in some of the North American Colonies one dollar notes freely circulated;

that throughout Germany the thaler note of the value of little more than 3 shillings was the most common circulation, that in the Mauritius the circulation consisted of notes of 5 Rupees or 10 shillings, and that in Ceylon the notes were of 10 shillings and upwards; but he did not understand the Right Honorable Gentleman to say that in any of those places the notes in circulation, whatever might be their denomination, were a legal tender. The notes of the Bank of England constituted the single exception mentioned by the Right Honorable Gentleman, but in England they had no notes of a lower denomination than £5. Referring to the remarks of the Right Honorable Mr. Wilson which he had just quoted, it certainly seemed to him that, if it was not essential to the success of a system of paper currency in the countries mentioned by the Right Honorable Gentleman that their notes should be a legal tender, it could not be necessary to the success of a similar measure in this country nor right and just in itself that notes of the very low denomination of five and ten Rupees should be placed on a different legal footing in this respect. It certainly did seem to him that if there were, as he supposed there must be, valid reasons for not making any of the notes of the countries mentioned except England, where as already mentioned there was no note of a lower denomination than £5, a legal tender, notwithstanding all the facilities of communication and conversion which existed in England and in many of the other countries mentioned, and which never could exist in this country in the like degree, the same reasons must apply with even greater force for not rendering notes of the very low denomination of five or ten Rupees, a legal tender in India where the peculiar character, habits, and prejudices of the people furnished additional arguments against the measure. These were the objections which he entertained to the Section which contained the provision in question, and he hoped that Section would undergo considerable modification before the Bill passed into law. He would not detain the Council farther than to say that he thought there was much force in the objections which had been taken by the Honorable Member for Bengal to the power proposed to be given to the Currency Commissioners to sell as well as to purchase Government Securities, and he was disposed to concur in what had fallen from the Honorable Member on that point.

THE VICE-PRESIDENT said, it was not his intention to occupy the time of the Council with any very lengthy remarks. He must observe however that he had very great objections to Section XVII, because if taken in connection with Section IX, it would cause great inconvenience by compelling laborers and others drawing wages to travel long distances and incur great expense for the purpose of getting their notes cashed. For instance, if a Railway Company, which had to pay a large sum in the shape of wages to their laborers, in order to save themselves the trouble of carrying so much bullion, were to deposit that sum in the place of issue and take in exchange small notes for the purpose of distribution among the laborers, the consequence would be that these poor people would have to travel a great distance to cash their notes. It appeared to him (the Vice-President) that that was highly objectionable. As the Honorable Member for Madras had shown, some persons might be obliged to travel 500 or 600 miles to have their notes cashed.

Then there appeared to him to be another objection. Suppose at any period the Office of issue should be overcharged with notes and make default in payment, yet any person had a right, during this period of apparent insolvency, to give these notes in payment to another, for Section XVII provided that the tender of such notes should be a legal tender, notwithstanding that the notes might considerably depreciate in value. By the English Act, the notes were legal tender so long as there was no default but not otherwise. Here, however, notes might

be paid out as legal tender even after they had been dishonored, and even the Government itself might pay its own debts in these notes from an Office at which they, had been dishonored.

Another objection was that no time was fixed by Section IX within which the Commissioners were bound to issue notes after the deposit of bullion. The following were the terms on which the issue was to be made :—

"*First*, in exchange for the amount thereof in silver coin of full weight of the Government of India ; or *secondly*, in exchange for the amount thereof in standard Silver bullion or Foreign Silver Coin computed according to such standard at the rate of ——— per ounce."

The blank as to the rate would require to be very carefully filled, but then there was a proviso that the Commissioners

"shall in all cases be entitled to require such silver bullion and foreign coin to be melted and assayed at the expense of the person tendering the same, and provided also that in all places where there is no Mint of the Government of India, it shall be optional" for the Commissioners "to issue notes in exchange for silver or foreign coin under this Section."

Now how would that be effective in a case like that which happened two or three years ago when there was so great a pressure that the Mint could scarcely coin silver as fast as it was required? According to the Bill a person might deposit a lakh of Rupees worth of bullion and immediately receive in exchange notes of the same value. On the same day he might ask for coin in exchange for those very notes, and the office of issue would be obliged to meet the demand; whereas if the person were to apply to the Mint to have his bullion coined, he would receive the usual Mint certificate making the coin deliverable twenty days after the receipt of the bullion. The merchants, therefore, instead of waiting twenty days before they could get their bullion coined, would avail themselves of the provisions of this Bill, and thus there might frequently be a very great run upon an Office of issue. He doubted very much whether, in a country so extensive as India, Section XVII should be passed at all. He entirely concurred in the objections raised by the Honorable Members who had preceded him as to the difficulty of making notes for such small amounts as five or ten Rupees a legal tender. He was not disposed to vote in favor of this Bill with such a Clause as that which made these small notes legal tender. He thought that we should hardly be dealing fairly with the public in allowing the Bill to go out with the Clause in question. He would either strike out that Clause, or insert a provision that the cash in the Collector's Offices should, when necessary, be available for the payment of the notes.

SIR BARTLE FRERE said, he was very glad to see the discussion which had ensued on the Motion for the second reading of the Bill, though he could not help thinking that the greater part of what had been said would have more properly come before the Council when in Committee upon the Bill. He was not certain if he had correctly apprehended the drift of the remarks which fell from the Honorable Member for Bengal, when he spoke of the measure as one to "get rid of the Currency" and of its "depriving the people of the Currency they chose to have." He (Sir Bartle Frere) thought that the Honorable Gentleman had not sufficiently borne in mind the principle of this Bill. He did not think he could better answer the objections of his Honorable friend than by reading an extract from an article written so far back as 1847, by Mr. Wilson, on the substitution of one pound notes for the Gold Currency. In this article Mr. Wilson said :—

"We have stated, in a former article, that we hold it as an indispensable principle, with regard to a Paper Currency based upon a metallic standard, that it should conform in every respect with a circulation consisting exclusively of coin. It must perform the same functions as an internal currency; it must maintain at all times precisely the same value; it must be equally capable of being used to effect a foreign payment, by commanding the amount in gold which it represents; it must follow precisely the same rules in all its fluctuations, in its contractions, and its expansions; it must, in fact in every

respect, be practically identical with a pure and entire metallic currency. If so, it is impossible that any objection can apply to paper that would not apply to gold. Now the plan which we have proposed embraces the whole of these essentials of a currency. We should not add one shilling to the currency; we should only substitute paper, secured in its convertibility into coin, for the coin itself."

That was the fundamental principle of the Right Honorable Gentleman's plan, and it had been entirely lost sight of by the Honorable Member for Bengal in his remarks on the subject. He (Sir Bartle Frere) would also read another answer given by Mr. Hubbard, for many years a Director, and repeatedly Deputy Governor of the Bank of England, in his evidence before the Committee of the House of Commons, in 1857, which bore on this point. He was asked—

"In case of a metallic currency, would you think it desirable to place any limit by law or regulation upon the amount of that circulation?"

Mr. Hubbard answered—

"I should not think it expedient to do so, because any attempt to do it, would be utterly unavailing. I hold, that you can no more regulate the amount of circulation in a country, whether metallic or otherwise, than you can regulate the winds that blow."

Then he was asked—

"And you hold the same opinion with regard to a mixed circulation of gold and notes?"

He said—

"Entirely."

Then the question went on—

"Therefore, as far as the fluctuations are concerned, in both cases they would be acted upon by rules and circumstances over which the issuers of the notes, or the coiners of the gold, would have no power whatever?"

He said—

"None whatever. Whether the circulation be in notes, or whether it be in gold, the issuer of the circulation has no power to determine the amount which should be kept or used by the community. The community have a natural repugnance to keep by them needless Currency, either in notes or gold. There are no less than three objections to it; there is the inconvenience of it, there is the risk of it, and there is the loss of interest which is involved in keeping it. So that, practically, no one keeps more circulation in his possession than he can possibly help. The only way in which the amount so circulating can be affected is by the operation of the higher or lower value of money. If the value of money is low, say two or three per cent, people do not so much mind keeping a few hundred pounds lying idle, as they do when the value of money is six per cent, when they immediately scrape it all up and send it to their bankers, or endeavor in some way to make it profitable."

He was then asked—

"You would not consider it necessary in the case of a metallic circulation to attempt to regulate or to limit the quantity which the public should hold?"

He said—

"Not at all, no more than we do now; we do not now attempt any regulation, neither could we if there was a metallic circulation."

Now he (Sir Bartle Frere) thought that what the Honorable Member for Bengal forgot in all his remarks in this subject was the whole principle of Mr. Wilson's plan, which was that the notes should be as far as possible a portable representative of the silver coin, more easily kept and transferred, but that they should at any time command the amount of coin for which they were originally issued—that, as remarked by Mr. Angus in the Minute from which the Honorable Member for Bengal had already quoted, they should be receipts convertible into coin at pleasure.

Then with regard to what the Honorable Member for Bengal had said at considerable length about allowing the Commissioners to sell securities; the Honorable Gentleman observed that the Commissioners ought "not to be permitted to run down the Government Securities," and he expressed a strong hope that the Commissioners might be allowed to buy but not to sell securities, and that the interest should form a sort of fund to pay off the public debt. He (Sir

Bartle Frere) would not enter upon that subject at present. He would only remind the Honorable Member that the whole principle of the measure was that no more should be invested in Government Securities than experience showed to be safe. It was necessary to give by law the power of sale, but it was not intended that the Commissioners should be always in the market buying and selling, and practically it was intended that the securities once bought should never be sold merely as a means for providing cash in payment of notes. The experience of England had shown that the limit of cash required to ensure the immediate convertibility of the notes was one-third the total amount of notes issued. Here in India the measure would be tried on a purely tentative plan, and if the suggestions of the Secretary of State were carried out, there would be no possibility of the safe limit being ever exceeded.

The next point to which objection was taken by all the Honorable Members who had spoken, was as to making these notes a legal tender.

In reply, he (Sir Bartle Frere) would refer to what was stated by Mr. Wilson in bringing forward this measure, in the fourth page of his Minute. It was as follows :—

"In order that paper should perform all the functions of coin, it is essential that it should be a legal tender for all payments, except by the issuers, by whom it should be convertible into the coin it represents at the will and on the demand of the holder."

He (Sir Bartle Frere) need hardly argue that, unless notes were made legal tender, it was impossible that they should perform all the functions of the coin they represented and which possessed that advantage. This was one of the fundamental features of the whole plan, and without it the whole of the proposed measure must be comparatively inoperative.

The Honorable and learned Vice-President had alluded to the case of a Railway Company or other body wishing to pay their laborers in notes, and had spoken of the cost and trouble to the people in carrying the notes from the place of payment to the place of issue, which might be many hundred miles distant before they could be cashed. The Honorable and learned Gentleman supposed the case of a Railway Company paying their men in notes, which would be valueless to them unless they were cashed. Now, supposing for the sake of argument any thing of the kind were attempted, that was an evil which would readily correct itself. Supposing a Company were foolish enough to pay their men on some distant work in five Rupees notes one month before the notes had got into general circulation, so that they forced their workmen to take their wages in paper for which they could get no change without going to much expense and incurring much trouble; what would be the inevitable consequence? Why, that the workmen would immediately refuse to work, and the following month there would be no laborers on the work unless their employers consented to pay their wages in silver. He need not point out that an act of that kind could not be attempted by any body responsible to Government, without Government influence being immediately exerted to prevent a repetition of it. But it was quite unnecessary to imagine such extreme cases, the notes could only make their way into circulation gradually, and any one who attempted such a foolish and dishonest act as was imagined by the Honorable and learned Vice-President would find that it only recoiled on himself. The notes would always be a legal tender in payment for debts, and would be receivable in payment of Government Revenue, and that alone would tend speedily to bring them into general use.

The Honorable Members for Madras and the North-Western Provinces concurred in the objection to making notes legal tender, and also to making notes of lower denomination than twenty-five Rupees

He (Sir Bartle Frere) would observe, with regard to notes of small denomination, that there was no intention on the part of Government to issue them except for the convenience of the public. It had been found by expe-

rience that the notes of high denomination formed the most profitable issue. He believed the Bank of England would be very glad to get rid of its liability to issue its £5 notes. Owing to some difference in the mode of keeping the accounts, the Scotch Banks derived a considerable profit by the issue of £1 notes. But with regard to the Bank of England, the issue of £5 notes accompanied by all the checks required by the great London Bankers, to guard against forgery, proved a much less profitable business. So far, therefore, Honorable Members might rest assured that, if Government consulted only their own interests, they would confine the issue of notes to the higher denominations. The small notes would only be issued for the convenience of the public. In Ceylon which was the only place at all analogous to India, where notes of so small a denomination as five shillings were issued, there was a great outcry when the circulation was withdrawn. The planters and their coolies found that they lost a great convenience when the Bank for its own advantage withdrew those notes from circulation. The Honorable Gentlemen might be sure that Government was not likely to issue such notes except to suit the public convenience.

MR. HARINGTON said, he did not object to the issue of notes of low denominations. His objection was to their being made legal tender.

SIR BARTLE FRERE said, the two things must go together.

THE VICE-PRESIDENT said that, by Section IX, Government would be compelled to issue such notes on demand in exchange for coin or bullion.

SIR BARTLE FRERE said, a man might certainly go and take notes for his money, send them to a distant part of the country, and there pay them away to people to whom it might be very inconvenient to receive them. But any such attempt to injure a man's creditors would carry its own punishment in the case of private servants, to which reference had been made. After being once so cheated, the servant would of course raise his demand for wages. But the real effectual security against any thing of the sort lay in the fact that the lower denominations of notes would only be issued as a demand for them was found to arise, and would, when issued, be as much a legal tender as silver coins.

MR. FORBES referred to Mr. Temple's Memorandum, and said that, the words therein used were "The Government *will* make its payments in notes."

SIR BARTLE FRERE said, the Memorandum was no part of the Bill, and must not be considered to be a final and authoritative exposition of the intentions of Government.

MR. FORBES remarked that the Memorandum was put forth officially, and was signed by Mr. Temple as Currency Commissioner.

SIR BARTLE FRERE continued, however that might be, it must not be considered as a final and authoritative exposition of the intentions of Government. Wth regard to the objection raised by the Honorable and learned Vice-President respecting insolvent circles he (Sir Bartle Frere) had no objection to the introduction of any Clause which would make the matter clear, but he would put it to the Council, whether Government was likely to allow such a thing to occur. To allow their Currency Commissioners to become bankrupt, when the Collector in the adjoining district had silver in his treasure chest, would not be at all to the credit of the Government, nor did he think that such an event was likely to happen.

With regard then to the case put by the Honorable and learned Vice-President respecting the Mint certificates and the omission of the mention of any time within which the Commissioners should not be bound to give notes for bullion, he would only observe that the difficulty alluded to by the Vice President was the very circumstance which led to the demand on the part of many branches of the mercantile community for this measure. The circumstances were exactly as stated by his Honorable and learned friend. Merchants, both here and in Bombay, had large sums in bullion and foreign coin, which the Mint could not

coin into Rupees fast enough to meet the demand for money; the Banks, with their cellars full of bullion, were unable to advance money to their best and safest customers to meet their liabilities, and men were in danger of stopping payment with large sums of silver at the Mint, which could not be converted into current coin for many days to come. Bullion was abundant, while in the shape of any circulating medium, silver was scarce. It was then felt by the mercantile community that, if we had had a rational Paper Currency on a sound basis, it would have sufficed for all wants, and the merchants would not have pressed the Mint to coin their money.

He thought that, as far as the means at his command went, he had answered the objections by the Honorable Gentlemen, and he understood them to vote for the second reading so far as the principle of the Bill only was concerned, and not with regard to its details.

MR. SCONCE said, by way of explanation, with reference to the misconception referred to by the Honorable Member opposite (Sir Bartle Frere), that he (Mr. Sconce) was not sure on what point the Honorable Gentleman supposed him to be mistaken. He (Mr. Sconce) entirely agreed in the extract from Mr. Wilson's papers which had been read, and which went to show that a paper currency should be in substitution for, and not in addition to, a metallic currency. He entirely accepted that statement, and all that he meant to argue was that the substituted paper currency would have the effect of depriving the country of the same amount of coin.

The Motion was then put and carried and the Bill read a second time.

RECOVERY OF RENTS (BENGAL).

MR. SCONCE moved the second reading of the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal.)"

The Motion was carried and the Bill read a second time.

EMIGRATION TO ST. KITTS.

SIR BARTLE FRERE moved that the Bill "relating to the emigration of native laborers in the British Colony of St. Kitts" be read a third time and passed.

The Motion was carried and the Bill read a third time.

EMIGRATION TO THE FRENCH COLONIES.

MR. BEADON said that, as the Standing Orders had been suspended, he begged to move that the Council resolve itself into a Committee upon the Bill "to regulate and authorize the emigration of Native laborers to the French Colonies."

THE VICE-PRESIDENT said that, unless there was very great necessity for proceeding with the Bill to-day, he should prefer the consideration of it to stand over till Saturday next, as he had not had time to look into the Report of the Select Committee.

MR. BEADON said, the necessity was that the Agent appointed by the French Government for emigration to the Island of Re-union had arrived, and that repeated applications had been made for the early passing of the Bill. As the orders from home were extremely urgent, if there was no objection, he should like the Bill to be proceeded with.

MR. SCONCE said, he also wished that the Bill should not be passed to-day It had been hastily prepared and hastily revised; and as it was an important matter, he did not think that it should be hastily considered by the Council before it was finally passed. He wished the Council to remember that the Bill did not only apply to Calcutta, but also to Madras and Bombay; and he thought that the Madras and Bombay Governments should be consulted on the subject.

THE VICE-PRESIDENT said that, by Section XIII, emigrants could leave for Re-union at all seasons of the year. He thought therefore that it would make no difference whether the Bill was passed a week earlier or a week later. When we passed the Act for Mauritius, we did not suspend the

Standing Orders although emigration to that Colony was also very urgent and an Agent for the purpose had arrived. He (the Vice-President) did not see any particular necessity for passing the Bill so hurriedly. Nor was it even stated that the Agent of the French Government had hired a ship for conveying emigrants to Re-union, and as the Honorable Member for Bengal had suggested, the Madras and Bombay Governments ought to to be consulted in the matter. The Bill was one which, if once passed, could not be altered.

MR. BEADON said that, if the Honorable and learned Vice-President and the Honorable Member for Bengal still objected to the Bill being proceeded with to-day, he should have no objection to its consideration being postponed till Saturday next [Mr. Beadon then read Despatches from Lord Wodehouse and Sir Charles Wood showing the desire of Her Majesty's Government, that a law should be passed without loss of time to give effect to the Convention.]

MR. HARINGTON said, he thought that this discussion was not very well timed, and that it should have taken place on the Motion of the Honorable Member of Council (Mr. Beadon), who was in charge of the Bill, for the suspension of the Standing Orders with a view to an instruction being given to the Select Committee, appointed to consider the Bill, to make their report within a week. If he recollected rightly, that was the time fixed for the Select Committee to make their report. It was the practice of Select Committees, on Bills referred to them after the second reading, whether sanctioned by the Standing Orders or not, he was not then prepared to say, not to meet and consider a Bill until the period for which the Bill was published for general information had expired, unless, as in the instance in point, a special direction should be given to the Committee to make its report on an earlier date. The time for collecting the opinions of the local Governments was during the period that intervened between the second reading of a Bill and the date fixed for the Select Committee to which it was referred, to make their report upon it. Unless when a Bill was ordered to be republished, there would be an obvious inconvenience in seeking the opinions of the Local Governments upon a Bill after it had been reported upon by the Select Committee which was what he understood was now proposed by the Honorable Member for Bengal in respect to the present Bill. The objections taken by the Honorable Member for Bengal to their proceeding with the Bill to-day might perhaps have been properly urged when the Motion for suspending the Standing Orders was made for the purpose of giving to the Select Committee the instruction already mentioned, but not having been brought forward at that time, and the Council having resolved that the Bill should be proceeded with as rapidly as possible, he thought that the Council could not now consistently grant the delay asked for by the Honorable Member for Bengal on the ground on which he had placed his Motion.

After some further discussion, Mr. Beadon withdrew his Motion, and moved instead that the consideration of the Bill be postponed till Saturday next.

MR. SCONCE moved by way of amendment that the consideration of the Bill be postponed until reports were received from the Governments of Madras and Bombay on the subject.

The amendment being negatived, the original Motion was then put and carried, and the consideration of the Bill was accordingly postponed till Saturday next.

PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Code.

The postponed Section 66 and Sections 67 to 70 were passed as they stood.

Section 71 was passed after an amendment.

THE CHAIRMAN moved the introduction of the following new Section after the above:—

"Whoever kidnaps or abducts any child under the age of ten years, with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Agreed to.

Sections 72 and 73 were passed as they stood.

Sections 74 and 75 were passed after amendments.

THE CHAIRMAN moved the restoration, with modifications, of Section 76 of the Original Code. The Section as proposed was as follows:—

"Whoever unlawfully compels any person to labor against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Agreed to.

Sections 76 and 77 (relating to rape) were passed after amendments.

Section 78 (respecting unnatural offences) was passed as it stood.

Section 1 of Chapter XVII (of Offences against Property) was passed after an amendment in illustration (*k*).

The consideration of the Code was then postponed, and the Council resumed its sitting.

The Council adjourned at 5 o'clock, on the Motion of Mr. Harington, till Tuesday morning at 7 o'clock.

Tuesday Morning, September 25, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

H. B. Harington, Esq.,	C. J. Erskine, Esq.,
H Forbes, Esq.,	and
A. Sconce, Esq.,	Hon'ble Sir C. R. M. Jackson.

PENAL CODE.

MR. ERSKINE said, he had received a very voluminous correspondence from the Bombay Government, suggesting that the crime of adultery be made a penal offence. It was not desirable that the papers should be printed. He should therefore move that they be laid upon the table.

THE VICE-PRESIDENT, in putting the question, observed that there was now in the Penal Code a Clause which provided for the offence.

The Motion was carried.

The Order of the Day being then read for the adjourned Committee of the whole Council on the "Indian Penal Code," the Council resolved itself into a Committee for the consideration of the Code.

Section 2 of Chapter XVII related to theft.

Some conversation ensued as to making this Section applicable to larceny in dwelling houses.

The Section was ultimately passed as it stood, the Chairman undertaking to prepare a new Section specially providing for the other matter.

Section 3 (relating to theft by a clerk or servant of property in the possession of his master or employer) was passed after the substitution of "ten years" for "seven years," as the maximum term of imprisonment to which the offender was liable.

Section 4 (relating to theft after preparation made for causing death or hurt in order to the committing of the theft) was passed after a similar amendment.

Section 5 (defining extortion) was passed after a verbal amendment in illustration (*c*), and with the correction of a misprint in illustration (*a*).

Sections 6 to 9 were passed as they stood.

Section 10 rendered extortion by threat of accusation of offence punishable with death, transportation, &c., liable to be punished with imprisonment for ten years and fine.

SIR CHARLES JACKSON said, there were certain accusations tantamount to assassination, such as accusations of unnatural offences, which, he thought, ought to be punished with transportation for life.

The Section was passed with the addition of words to the above effect.

Section 11 (relating to the offence of putting a person in fear of accusation of an offence in order to commit extortion) was passed after the enhancement of the term of imprisonment from seven to ten years, and with the addition of the same words as in the preceding Section.

Section 12 defined robbery.

MR. ERSKINE said, he observed it declared by this Section that "extortion is robbery, if the offender, at the time of committing the extortion, is *in the presence of the person put in fear*," but there was no provision making extortion robbery, if committed by the offender speaking in the hearing, and intending that he should be overheard by, the person put in fear

After some conversation, the following explanation was introduced into the Section, on the Motion of the Chairman, in order to meet the case above suggested :—

"The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint."

SIR CHARLES JACKSON pointed out that the same definition made extortion robbery, if committed by putting a person "in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person *present at the time of committing the extortion*." He (Sir Charles Jackson) saw no necessity for the words in italics. Suppose a person came to another person's house with two or three men dressed up as Policemen, and said that he would instantly have the other's wife arrested unless he paid him some money Why was it necessary that the wife should be present? It was quite clear that she should be so near as to be liable to instant arrest, but he (Sir Charles Jackson) did not think it was necessary for the definition to provide that she should be present. He should therefore propose the omission of the words in question.

The Motion was carried, and after some further amendments in the Illustrations, the Section was passed.

Section 13 defined dacoity.

MR. ERSKINE asked, if it was necessary to use the expression dacoity for gang robbery. It was a mere local and technical term and was not, he believed, used in Madras or Bombay or in the Supreme Courts. If there was no objection, he should move the substitution of gang robbery for dacoity.

The Motion was at first carried; but a difficulty having afterwards become apparent of defining a dacoit, and of providing against belonging to a gang of dacoits—

THE CHAIRMAN said that, as the term dacoity was pretty generally known throughout Bengal, it might be advisable to restore the original wording of the Section. He therefore made a Motion to that effect.

The Motion was carried, and the Section was passed as it originally stood.

Sections 14 to 18 were passed as they stood.

Sections 19 and 20 severally prescribed seven and five years as the minimum term of imprisonment, the former for robbery or dacoity with attempt to cause death or grievous hurt, and the latter for attempting to commit robbery or dacoity when armed with a deadly weapon.

MR. HARINGTON did not see the necessity for retaining these Sections which merely fixed a minimum of punishment. The principle of the Code was to leave the minimum of punishment for all offences, except those of the gravest character, such as offences against the State, murder, and attempts to commit murder, to the discretion of the Judge.

THE CHAIRMAN referred to a report submitted, he thought, by Mr. Samuells, in which he gave an account of the cruelties practised by the dacoits, and he thought that the Sections in question ought to be allowed to stand for the purpose of deterring offenders.

MR. ERSKINE asked, if it was not inconsistent to have a minimum of punishment in Section 19, and not in the preceding Section which related to dacoity with murder.

THE CHAIRMAN explained the reason of the distinction to be that, under Section 18, if any one of several persons conjointly committing dacoity, committed a murder, every one of those persons was liable to punishment; whereas Section 19 related to a particular offender.

The Sections were ultimately passed after the substitution of seven years for five years in Section 20.

Sections 21 to 24 were passed as they stood.

Section 25 was passed after a verbal amendment.

Section 26 (relating to the dishonest misappropriation of property in the possession of a deceased person at the time of his death) was passed after the addition, on the Motion of the Chairman of a provision rendering misappropriation by a clerk or servant employed by the deceased at the time of his death, punishable with imprisonment for seven years, instead of for three years, as provided by the Section in respect of other offenders.

Section 27 (defining criminal breach of trust) was passed after the addition of the following illustration :—

"A, a carrier, is entrusted with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust."

Section 28 was passed as it stood.

THE CHAIRMAN moved the introduction of the following new Section after Section 28 :—

"Whoever being entrusted with property as a carrier, wharfinger, or warehouse keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Agreed to.

Section 29 (relating to criminal breach of trust by a clerk or servant) was passed after the substitution of seven years for five years as the term of imprisonment.

Section 30 was passed as it stood.

The consideration of the Code was then postponed, and the Council resumed its sitting.

The Council adjourned at 9 o'clock, on the Motion of Mr. Harington, till to-morrow morning at 7 o'clock.

Wednesday Morning, Sept. 26, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

H. B. Harington, Esq., H. Forbes, Esq., A. Sconce, Esq., C. J. Erskine, Esq., and Hon. Sir C. R. M. Jackson.

PENAL CODE.

The Order of the Day being read for the adjurned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Code.

Sections 31 to 35 of Chapter XVII were passed as they stood.

Sections 36 and 37 were passed after a verbal amendment.

Section 38 was passed as it stood.

Sections 39 and 40 were passed after the substitution of three years for two years as the term of imprisonment for cheating, with the knowledge that wrongful loss might thereby be caused to a person whose interest the offender is bound to protect, and for cheating by personation.

Section 41 proposed three years as the term of imprisonment for cheating and dishonestly inducing a delivery of property.

SIR CHARLES JACKSON said, that in some cases three years' imprisonment would be a very inadequate punishment for this offence. He would suggest ten years.

THE CHAIRMAN said, only three years' imprisonment was provided for theft.

SIR BARNES PEACOCK said, this was a more serious offence than simple theft. It required the employment of some skill and ingenuity, and was committed by a superior class of offenders. The offence, moreover, was one very prejudicial to trade.

The Section was passed after the substitution of seven years for three years, on the Motion of the Chairman, and with the understanding that an alteration should be made in the Code of Criminal Procedure, giving Magistrates jurisdiction over the offence in certain cases, and empowering them to commit to the Sessions cases exceeding their jurisdiction.

Sections 42 and 43 were passed as they stood.

Section 44 was passed after the substitution of three years for two years, as the term of imprisonment for the fraudulent execution of a deed of transfer containing a false statement of consideration.

Sections 45 to 57 were passed as they stood.

Sections 58 and 59 were passed after verbal amendments.

MR. SCONCE moved the introduction of the following new Section after Section 59 :—

"Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, shall be punished with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine."

Agreed to.

Section 60 was passed after an amendment.

Section 61 defined Criminal Trespass.

SIR CHARLES JACKSON referred to the latter part of the definition, which provided that whoever "having lawfully entered into or upon such property unlawfully remains there with such intent, is said to commit Criminal Trespass." He thought these words rather wide. A person might visit another in his house ; the owner of the house might be guilty of some gross misconduct, which might provoke the visitor to say something ; and upon being desired to quit the house, he would be liable to be charged with Criminal Trespass.

THE CHAIRMAN said, a beggar might walk into a house and, if he saw a lady there, might refuse to leave the house, unless she gave him some money. This was one of the cases for which the definition referred to was intended to provide.

SIR CHARLES JACKSON admitted that there were some cases which the definition would very properly reach. His object was merely to prevent its extending to other cases like the one to which he had alluded.

The Section was ultimately passed after a verbal amendment.

Section 62 (defining house-trespass) was passed after the omission of Explanation 2, which was considered unnecessary.

Sections 63 and 64 (severally defining lurking house trespass, and lurking house trespass by night) were passed after a similar amendment.

Section 65 (defining house-breaking) was passed as originally printed, with verbal amendments in the Explanation and Illustrations.

Section 66 was passed as it stood.

Section 67 was passed after the substitution of three months for one month as the term of imprisonment for criminal trespass.

Section 68 was passed as it stood.

Sections 69 and 70 were passed after amendments.

Section 71 (relating to house trespass in view to the commission of an offence punishable with imprisonment) was passed after a similar amendment, and with the addition of the following words :—

"and if the offence intended to be committed is theft, the term of imprisonment may be extended to seven years."

Section 72 (relating to house-trespass, after preparation made for causing hurt to any person) was passed after the substitution of seven for three years as the term of imprisonment.

Section 73 was passed as it stood.

Section 74 (relating to lurking house trespass or house-breaking in view to the commission of an offence punishable with imprisonment) was passed after corresponding amendments to those made in Section 71, the term of extended imprisonment being fixed at ten years.

Section 75 was passed after the substitution of ten for five years as the term of imprisonment for lurking house trespass or house-breaking after preparation made for causing hurt to any person.

Section 76 was passed as it stood.

Section 77 (relating to lurking house trespass or house-breaking in view to the commission of an offence punishable with imprisonment) was passed after corresponding amendments to those made in Sections 71 and 74, the term of extended imprisonment being fixed at fourteen years.

THE CHAIRMAN, with the permission of the Council, went back to Section 14 (relating to robbery) and proposed the addition of the following words:—

"and if the robbery be committed on the highway, between sunset and sunrise, the imprisonment may be extended to fourteen years."

Agreed to.

Section 78 was passed after the substitution of fourteen for seven years' imprisonment for lurking house trespass or house-breaking after preparation made for causing hurt to any person.

Section 79 was passed as it stood.

THE CHAIRMAN moved the introduction of the following new Section after Section 79:—

"If at the time of the committing of lurking house trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house trespass by night or house lurking by night, shall be punished with transportation for life, or with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine."

Agreed to.

Sections 80 and 81 were passed as they stood.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council adjourned at 10 o'clock on the Motion of Mr. Harington, till to morrow morning, at 7 o'clock.

Thursday Morning, Sept. 27, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

H. B. Harington, Esq., H. Forbes, Esq., A. Sconce, Esq., C. J. Erskine, Esq., and Hon'ble Sir C. R. M. Jackson.

PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council "on the Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Code.

THE CHAIRMAN, pursuant to the understanding come to on a former occasion, that there should be a special provision for the crime of larceny in dwelling houses, moved the introduction of the following new Section after Section 2 of Chapter XVII:—

"Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Agreed to.

THE CHAIRMAN said, that Section 3 of the same Chapter rendered theft by a clerk or servant of property in the possession of his master or employer, punishable "with imprisonment of either description which may extend to seven years, *or with fine, or both.*" He thought that this was too heinous an offence to be punished only with fine, and that it ought to be punished both with imprisonment and fine. He should therefore propose the substitution for the words in italics of the words, "and shall also be liable to fine."

The Motion was carried, and the Section then passed.

Section 1 of Chapter XVIII (of offences relating to documents and to trade or property marks) was passed as it stood.

Section 2 (defining what making a false document was) was passed after verbal amendments.

Sections 3 and 4 were passed as they stood.

Section 5 provided as follows:—

"Whoever forges a document, purporting to be a record or proceeding of a Court of Justice, or a Register of Birth, Baptism, Marriage, or Burial, or any other Register kept by a public servant, or any Certificate or Document purporting to be made by a public servant in his official capacity, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Several amendments were made in this Section, which, when finally settled, stood as follows:—

"Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a Register of Birth, Baptism, Marriage, or Burial, or any Register kept by a public servant as such, or any Certificate or Document purporting to be made by a public servant in his official capacity, or any authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or any power of attorney, shall be punished, &c."

Section 6 provided as follows:—

"Whoever forges a document which purports to be a valuable security or a will, or which purports to give authority to any person to make or transfer any valuable security or to receive the principal, interest, or dividends thereon, or to receive any money, goods, or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Several amendments were proposed and carried which made the Section run as follows:—

"Whoever forges a document which purports to be a valuable security or a will or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt, acknowledging the payment of money, or for the delivery of any money, movable property, or valuable security, shall be punished, &c."

The two following Sections, omitted by the Select Committee, were restored, to come in after Section 6:—

"Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

"Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Sections 7 and 8 were passed as they stood.

Section 9, which provided imprisonment for seven years and fine for making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery, punishable under Section 6, was passed after the insertion of transportation for life as a punishment for the offence.

Section 10 was passed after the substitution of seven for three years, as the term of imprisonment for making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery punishable under any other Section of this Chapter than Section 6.

Section 11 provided as follows:—

"Whoever has in his possession any document which he knows to be forged, and which is or purports to be a valuable security, or a will, or which gives or purports to give any such authority as is mentioned in Section 6 of this Chapter, with intent that the same shall be used or uttered as genuine, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

THE CHAIRMAN moved the omission of the above Section, and the substitution of the following:—

"Whoever has in his possession any document, knowing the same to be forged and intending that the same shall be used or uttered as genuine, shall, if the document be one of the description mentioned in Section 5, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document be one of the description mentioned in Section 6, may be punished with transportation for life, or with imprisonment of either descrip-

tion for a term which may extend to seven years, and shall also be liable to fine."

Agreed to.

Section 12 (against counterfeiting a device or mark used for authenticating documents described in Section 6, or against possessing counterfeit marked material), was passed after the substitution of transportation for life, or imprisonment for seven years, for imprisonment for ten years, as the punishment for the above offences.

Section 13 was passed after the substitution of seven for two years' imprisonment for counterfeiting a device or mark used for authenticating documents other than those described in Section 6, or for possessing counterfeit marked material.

Section 14 related to the fraudulent cancellation, destruction, &c., of a will, and Section 15, of a valuable security; the former providing imprisonment for ten years and fine, and the latter imprisonment for three years and fine, as the punishment for the offences of which they severally treated.

The Sections were incorporated together, the incorporated Section running as follows:—

"Whoever fraudulently or dishonestly or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to secrete any document which is or purports to be a will or any authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Sections 16 to 20 were passed as they stood.

Sections 21 and 22 were passed after verbal amendments.

Section 23 was passed after the substitution of three years for two years' imprisonment for fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.

Section 24 was passed as it stood.

Section 25 was passed after the substitution of three years for one year's imprisonment for fraudulently making a false mark upon any package or receptacle containing goods.

Sections 26 and 27 were passed as they stood.

The consideration of the Code was then postponed, and the Council resumed its sitting.

The Council adjourned.

Saturday, September 29, 1860

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,
Hon'ble C. Beadon,
H. B. Harington, Esq.,
A. Sconce, Esq.,
Hon'ble Sir C. R. M. Jackson,
and
C. J. Erskine, Esq.

GRANTS OF LAND.

THE CLERK reported to the Council, that he had received from the Home Department, an Extract from the Proceedings of the Government of India, relative to the proposed enactment of a law regarding the extension of the provisions of Act VI of 1849, to grants of land for services rendered to the State, or in support of titles conferred by Government.

SIR BARTLE FRERE moved that the above communication be printed.

Agreed to.

RAILWAYS.

MR. ERSKINE presented to the Council a further communication which he had received from the Bombay Government relative to the Bill "to amend Act XVIII of 1854 (relating to Railways in India)," and moved that it be printed and referred to the Select Committee on the Bill.

Agreed to.

PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. HARINGTON said, the Honorable Member for Madras being,

he regretted to say, prevented by indisposition from attending the Council to-day, had asked him to solicit the Council to allow the Motion for the first reading of the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George" to be postponed until the next Meeting of the Council.

POLICE.

SIR BARTLE FRERE, in moving the first reading of a Bill "for the better regulation of Police," said that the pressure of business upon the Legislative Council, so shortly before its adjournment, compelled him to be very brief in stating the views of Government on this measure, which he believed was second in importance to few at this moment. The Council was aware, from what had repeatedly been mentioned by Mr. Wilson in the course of the current year, that there was no portion of the civil expenditure of Government which had more rapidly increased of late years, none into which searching enquiry was more necessary and where economy was more possible, than in the Police and semi-Military charges. The attention of the Government of India had long been directed to this subject, in the belief that greatly increased efficiency was not only compatible with, but essential to, greater economy in this branch of the expenditure. In this belief the Government of India desired, before the Council adjourned over the holidays, to lay before the Council a number of papers relating to the appointment and labors of the Commission which was now sitting on the subject of the general Police of India, with the present Bill which was founded on the report of that Commission. It was proposed that this Bill should, if the principle be approved by the Council, be read a second time, so as to go forth to the public for the criticism of those who were best able to offer an opinion on the subject, and it was hoped that, by the time the Council re-assembled, we should be in a position to proceed with advantage in the further discussion of such an important measure as a general law for the regulation of Police.

It was necessary that he should offer a few brief remarks on the history of Police reform in India during the last quarter of a century. It would be in the recollection of Honorable Members of this Council, that up to a recent period, the Magistrate was charged with the oversight of the Police of his district, and this had been the practice for upwards of half a century. The consequence was that, as business increased, the Magistrate gradually became a Judicial Officer with very extended powers, and was little able to give his Police that exclusive attention which was absolutely requisite to keep it efficient. About the time of Lord William Bentinck, complaints of the inefficiency and corruption of the Police in all our Regulation Provinces became universal. The complaints were generally that, whether few or many in proportion to the population, the Police was everywhere oppressive and corrupt, undisciplined and ill-supervised. The superior Officers and Magistrates were either inefficient Superintendents of Police, or if active as Police Officers, apt to be biassed as Magistrates. The earliest attempts at reform were made in the Presidency towns by appointing Superintendents of Police separate from the Magistrates, and it was observable that the result had been invariably such as to demonstrate the soundness of the principle of that separation. He thought that any body coming to Calcutta, where the Police and Judicial duties of sitting Magistrates had long been separated, must be struck with the general efficiency of the Police. In Bombay great insecurity of life and property prevailed for some time until Lord Clare about 1832 or 1833 reformed the Police by appointing separate Officers as Superintendents of Police, and separate sitting Magistrates to try cases that were brought up. This measure was coupled with the appointment of non-official Justices of the Peace, both native and European. These gentle-

men had discharged the duties entrusted to them in a very satisfactory manner, and it had been found that the change had been attended with excellent results as regarded the administration of justice in Bombay, where a very general interest was taken in the matter by the non-official public. His Honorable and learned friend opposite (Sir Charles Jackson) would recollect numerous instances of the efficiency of the Police under Mr. Forjett, which was as high as could be expected of any Police in India. He (Sir Bartle Frere) would instance the suppression of the Bunder gang which had for some time entirely baffled the efforts of the Police. During the mutiny, Mr. Forjett was successful in maintaining public confidence in the Government throughout the native town, in a manner which would serve as an example in any European country. He (Sir Bartle Frere) mentioned these instances in illustration of the value of one great feature of the measure which he was about to lay before the Council, that is, the entire separation of the Executive Police from all immediate subordination to the sitting Magistrate and from all judicial functions.

The first real attempt to reform the Mofussil Police was made in Sind by Sir Charles Napier. Immediately after the conquest of that province, he drew up a plan, on the model of the Irish Constabulary, which though complete from the first, was the result of long thought. Its characteristics were separate organization, complete severance of Police and judicial functions, complete subordination to the general Government, and lastly, discipline not in the nature of parade, but as far as was necessary to effective organization. His plan was adapted to the local village system as then prevailing in that Province, and since its introduction nothing could have been more efficient than the Police. It was at first received with great distrust by the civil officers, a feeling in which he (Sir Bartle Frere) must say he at first shared, but its results were such as to convert the most sceptical among them. He might enumerate the total suppression of organized violent crime, the entire absence of dacoities or highway robberies, and the check to the very prevalent crime of cattle-stealing, all which testified to the soundness of the principle of the measure. Nothing could have been better than the conduct of the Sind Police during the mutiny, and for that and the general efficiency of that Police the thanks of the Government had repeatedly been conveyed to Major Marston, the Captain of Police who had belonged to it since its first formation under Sir Charles Napier. The plan was approved by Lord Ellenborough who was then Governor-General of India, and he ordered its extension to the North-Western Provinces. Three Police corps were raised to relieve the Military of the Civil duties previously performed by them. Lord Ellenborough however left India and there the reform stopped. Shortly after, Sir George Clerk, who came out as Governor of Bombay, visited Sind in 1847. He instantly recognized the value of the Sind Police and commenced reforms on a similar principle in Bombay. He (Sir Bartle Frere) would refer to the great value of Sir George Clerk's opinion, as affording an ample answer to the usual objection, that this system might do very well for England and Europeans, but was not adapted to this country. He believed there was no man living whose opinion was entitled to greater respect on such a question than Sir George Clerk, whether as regarded his intimate knowledge of the natives, or his sympathy with their wants and wishes, and his tact and discrimination in dealing with them. Shortly afterwards the lamented Sir Henry Lawrence was appointed Chief Commissioner of the Punjab after the annexation of that Province, and he commenced upon the re-organization of the Police very much on the same plan adopted in Sind. Unfortunately, however, the original was departed from in many particulars, and a double system of Police created, namely, first, the employment of an unorganized

body of Burkundauzes under the Deputy Commissioners as Magistrates, and secondly, the formation of Police Corps under the control of the Chief Commissioner, doing no real Police work, but exclusively employed as Jail and Treasure Guards and on other duties which had previously devolved on the regular army.

This system was effective but very costly. The Police Corps were in fact a second Civil Army. This was an objection to them as a Police, but it was very fortunate for India that the mistake—for it was a mistake as far as regarded their Police duties—was made, for it was these Corps which so materially assisted Sir John Lawrence to hold the Punjab and to retake Delhi. Still they were a very expensive addition, whether looked on in connexion with the Police or the Army.

The Punjab Police was, he believed, the model for the Police Corps and levies which had grown up in the North-Western Provinces since 1857, and which now formed so serious a charge on the finances, and also for the Police Corps which existed in Oude before the mutiny.

He would now turn to Oude. The day after the fall of Lucknow, Sir James Outram, under instructions from the Governor-General, desired Colonel Bruce to submit a scheme for Police, which he did on the Sind model, on the 23rd March 1858. When Sir Robert Montgomery succeeded, we only held the capital, and the country had still to be subdued. He ordered Colonel Bruce to raise a Police to aid in the first instance in that object. In June 1858, three thousand cavalry in five regiments, and twelve thousand Infantry in fourteen regiments, were ordered to be ready to take the field with Lord Clyde by the 1st October 1858. This was done. They occupied the country as the army passed over it, were engaged in eighteen actions, and lost one European officer and thirty-seven men killed, one hundred and seventy-six men wounded, and one hundred and ninety-two horses, casualties. On the 1st January 1859, Sir Robert Montgomery decided that the country having been thoroughly subdued, the Police should have a less Military character, and be made a purely Civil body on the principle of entire separation from the Military on the one hand, and from the Judiciary on the other. Within two months this was done. Colonel Abbott organized a Constabulary for Lucknow on the model of the London Police, and large numbers of Nujeebs and Burkundauzes were absorbed. The success of the measure was so great, and tranquillity so complete, that on the 21st July 1859 the Commissioners proposed a reduction of eleven lakhs per annum, the Thesil establishment being simultaneously reduced. The present Oude Police was about 9,200 men in number. Before the mutiny it was about 10,000 Police besides the Oude local force, three regiments of Cavalry, and ten regiments of Infantry. The annual cost of Nujeebs and Police under the King's Government as taken from Parliamentary papers was 45,61,000 Rs. After annexation, the cost of the Police and Local Force was 26,98,000 Rs. The present Police expenditure was about 15,82,000 Rs. Meanwhile the Chief Commissioner contemplated further reduction, which it was hoped would bring it down to eleven lakhs of Rupees per annum. The hearty thanks of India were due to Sir Robert Montgomery, Mr. Wingfield, and Colonel Bruce for these results, which he begged the Council to note as evidence of the mode in which such a Police could be adapted to the wants of any province, and as a very sufficient answer to the objections which had been raised, both in this country and in England, to the large expenditure on the Police of the conquered province.

He would only briefly advert to what had been done in the way of Police reform in Madras with which the Council were probably better acquainted than he was. Attention was first drawn to the subject by the Report of the Torture Commission, and the result was embodied in the Act passed by the Legislative Council on the 6th September 1859. He might

mention that he had often heard Mr. Robinson, the Chief of Police at Madras, speak of the obligation he was under to this Council, and especially to the Honorable and learned Vice-President, for the aid he received in framing this Act, which, although it had not been in force for more than a year, had proved most successful in operation. The principle of that Act was well known to the Council, and he (Sir Bartle Frere) would therefore only read the following brief Extract from the Report on the administration of the Police, as constituted under that Act, for the official year ending 30th April last:—

"The constitution of the Madras Police is as follows:—

I. A village or local Police consisting of, 1st. The village Watch or local Police Establishment—constituted as at present, of the Talari or Village Watch and detective; but strengthened, improved, adequately remunerated and properly controlled: The Talari Police is strictly localized, and the limit of their duty duly circumscribed. They do the ordinary Police duty of the village, and are kept in daily communication with each other and the general Constabulary, through—2ndly, the Village Inspector, who is one of the principal and most intelligent ryots of the neighborhood and supervises the working of the Village Watchers within a circle of the Villages conveniently clubbed together, and makes a daily report of all occurrences that take place to Head Constable of the district. The Village Inspector forms an important link in connecting the Police with the respectable rural population of the country.

II. General Stipendiary Constabulary—consisting of Inspectors of Police, Head and Deputy Constables, and Privates. These latter are formed into Police parties of a strength adapted to the work to be performed; and are located under the command of Head and Deputy Constables at the Head-quarters of the Taluc Magistracy, and in other convenient positions for the patrol and watch of the highways and country in general; every part of which is visited and communicated with once in twenty-four hours. District Inspectors of Police control and supervise the working of both the Village Police and the parties of the general Constabulary. They command them when collected for the performance of any duty; and form, with the petty officers, the detective, and, so far as falls within the proper province of the Police, the prosecuting agency of each district. The lower grades of the general Constabulary are drawn from that class of the people who become peons and enter the Native Army; and are of all castes and races. The Constables or petty Officers will generally rise from the ranks. The Inspectors, the superior Officers of the Force (a fair proportion of whom will be Europeans and East Indians) are drawn from those superior classes of native society that enter the higher walks of the general service of the Government. They will intelligently guide and carefully watch the conduct and spirit of the ranks without being too intimately connected either in interest or sympathies with the bulk of the Force.

That degree of Constabulary training and instruction which are indispensable to a body which has to guard Treasuries and Jails, and may be called upon to support the Magistracy in preserving the peace and ensuring order, is imparted to the force. They learn the use of their arms and the simple evolutions that may be required, but they carry no arms beyond the truncheon, the ordinary badge of Office, except when occasion requires. The supply of arms to each district will be in a very limited proportion to the force employed. The means of rapid concentration are observed, and are greatly facilitated by the relation the Constabulary stands into the Village Police.

No distinction is observed between preventive and detective duties. Every Police Officer whether of the Village Police or general Constabulary is responsible for every duty belonging to the Police. The smooth working of the Police is especially attended to; and above all they are enjoined not to annoy the people by unnecessary interference. The Police is forbidden by the law to entertain petty complaints of every description, and even in cases of grave crime operates generally under a Magistrate's warrant only. Every grade of the Police is amenable to the jurisdiction of the Magistracy."

The Council would observe that this constitution struck at the root of one of the great curses of this country, namely, the detention by the Police of persons charged with offences, often without warrant and for corrupt purposes. Since the passing of the Act eleven districts had been examined and reported upon by the Inspector-General. On the 25th of October 1859, North Arcot was the first district brought under the operation of the Act. It had been extended to seven districts before the end of the official year. The area taken in hand up to this date was nearly ten thousand square miles, and the number of the force organized was six thousand. Care had been taken to render the Village Police effective in every district simultaneously with the introduction of the regular Constabulary. No single case of jarring with the Magistracy had occur-

red. This was remarkable, as a transition state was full of anxiety, and nothing but great forbearance on both sides could have enabled it to be passed through in peace. He thought that what he had said on the subject of the Madras Police would be satisfactory to the Council as tending to show that they had not been wrong in passing that Act.

In the North-Western Provinces a great deal had been done preparatory to effecting a reduction of Police expenditure and a reform of the Police. In November 1858, two Commissions were appointed at Agra and Allahabad to consider and report on the Police of those Provinces. In October 1859, a comprehensive report was received from the Lieutenant-Governor on the subject, on which after much correspondence, final instructions were given by the Governor-General in April last. The cost of the Military Police alone in the North-Western Provinces amounted to 44,61,000 Rupees, from which the Lieutenant-Governor proposed to reduce thirteen and a quarter lakhs, the Civil Police to continue as a separate establishment costing about fifteen lakhs annually. The Military Police were employed to guard Jails and Treasuries, escort treasure and prisoners, and have a reserve force at Head-quarters. The entire proposed force of Military Police consisted of eighty-six European Officers, four thousand horse, and sixteen thousand foot, the cost of which was thirty-one and a half lakhs of Rupees per annum. The Governor-General estimated that seven thousand foot and eighteen hundred horse would be sufficient at a cost of about eighteen lakhs per annum, and suggested an amalgamation of the Civil and Military Police on the Oude system, so as still further to reduce the cost. In reply the Lieutenant-Governor intimated his willingness to accept the Oude system with some modifications, and appointed a Committee at Nynee Tal to consider the subject, and report on it, and it was hoped that the result of their labors would be a very considerable reduction of expenditure under this head.

So with regard to the Punjab. Sir Robert Montgomery was asked, in a letter from the Governor-General in April last, to consider the expediency of remodelling the Punjab Police on the Oude system, or, if that were impracticable, to reduce his Military Police to what was absolutely necessary for the internal peace of the country. It was calculated that seven thousand foot and sixteen hundred horse would suffice for these purposes, thus providing for an immediate reduction of 2,888 horse and 2,144 foot. The Lieutenant-Governor seemed inclined to adopt the Oude system. He did not anticipate that he would effect much reduction in the Police expenditure, but he hoped greatly to reduce the standing Native Army of the Punjab.

The Government of India had thus done its part towards reducing the Police and semi-Military expenditure within proper bounds. It now rested with the local Governments to carry out these views, and from their well-known ability and energy, there was every hope of a satisfactory result.

In Bengal Police Battalions were raised during the mutinies of 1857. The present strength was 6,600 privates at a cost of nine lakhs and sixty thousand Rupees per annum, but the old Police and station guards had been abolished, and the total increase was less than seven lakhs per annum. It was the least expensive Police in India, but it was very desirable to render it more efficient, which could not be done without increased cost.

Thus it would be seen the necessity for economy had not been overlooked, but in order the better to secure that object and something like uniformity, the Police Commission was appointed on 17th August last, consisting of Mr. Court, for the North-Western Provinces; Colonel Phayre, for Pegue; Mr. Wauchope, for Bengal; Mr. Robinson, for Madras; Mr. Temple, for the Punjab; and Colonel Bruce, for Oude; all men of ripe experience, especially in matters connected with Police. They had submitted an able report which would be laid before the Council, to-

gether with this Bill which embodied the principles adopted in their report. The report was accompanied with documents which he thought would be found extremely interesting as regarded the cost of the Constabulary, which it was proposed to substitute for the present Police. The propositions of the Commission would be found stated in full in their report. He would only advert to the important ones; they were as follows:—

Complete separation of a Military armed force under Military command, from the Civil Constabulary—

That the Military Force should confine itself to Military duties, and the Civil Constabulary to Civil duties—

That the Civil Constabulary for India should be formed on the model of the English and Irish Constabulary—

That the Civil Constabulary should be under the Executive Government for all Police purposes, protective, preventive, and detective—

That unity of action and organization were essential to efficiency and economy—

That all separate Police and quasi Police bodies must therefore be absorbed in the new Constabulary—

That the same body should also provide for all purely Civil Police duties connected with the army, such as watching military stores, &c., as distinguished from guarding them—

All personal guards and orderlies and Municipal Police to be incorporated in the new Constabulary—

That the new Constabulary be linked to the village Police, so as to make the latter an useful supplement to the former—

Mounted Policemen to be employed only where absolutely necessary—

That there was to be no separate detective body, no spies and informers, who, under the present system, were a curse to the country—

That the Police department should be a separate branch of administration with an Inspector-General under each Government, the Police being linked on to the Magistracy at the District Office or Chief Magistrate of the district, whatever might be his denomination—

The Inspector-General to have under him Deputy Superintendents and other subordinates—

Complete severance of Executive Police and judicial functions. The paragraph on this subject ran thus:—

"That as a rule there shall be a complete severance of Executive Police from judicial authorities, that the official who collects and traces out the links of evidence, in other words virtually prosecutes the offender, should never be the same as the Officer, whether of high or inferior grade, who is to sit in judgment on the case even with a view to committal for trial before a higher tribunal. As the detection and prosecution of Criminals properly devolve on the Police, no Police Officer should be permitted to have any judicial function."

The rest were details as to pay and organization. Among them it was provided that the pay of the Constabulary should be always equal to the highest wages of unskilled labor; that of Officers and Non-Commissioned Officers being such as to put them above temptation and to form an inducement to respectable men to enter.

It was not to be expected that this plan would be accepted everywhere. Its progress must be gradual as it had been in England and Ireland, where many years had elapsed before the system was extended over the whole kingdom. It was hardly to be expected that the measure would be carried out at once. It was essential that it should carry with it the consent of the officers by whom it would be worked. It was not the intention of Government to put in force such a system until the officers to whom that duty would be entrusted were convinced of the soundness of the principle on which it was based. We had an encouraging proof of the mode in which those principles commended themselves to the judgment of practical men in the report of the Commission which was composed of officers of Government who had come from different parts of the country, and who had previously held the most discordant views. But after they had very fully discussed the subject, they unanimously adopted the report which was the foundation of this Bill. The Commis-

sioners would now return to their districts and would re-assemble here to determine the financial part of the scheme proposed by them. But wherever these officers went, he trusted that they would carry with them and disseminate the principles on which they had agreed, for he felt that they were not only calculated to maintain the public peace and security but were also connected with the prosperity of the country, because unless the proposed scheme or some other equally efficacious in reducing the costs were adopted, there was no hope of bringing the income and expenditure of the Indian Government to meet within a reasonable period. It was to this point he trusted that the attention of the officers of Government would be directed. The subject of Police was one which had long attracted the attention of Mr. Wilson, and he believed that the plan of the Commission would have received his entire concurrence

He must apologize to the Council for having detained them so long. He trusted the importance of the measure would plead his excuse. He should now move the first reading of the Bill.

The Bill was read a first time.

STAGE CARRIAGES.

MR. HARINGTON moved the second reading of the Bill "for licensing and regulating Stage Carriages."

The Motion was carried, and the Bill read a second time.

CUSTOMS DUTY (PEPPER).

MR. HARINGTON (in the absence of Mr. Forbes) moved the second reading of the Bill "to alter the Customs Duty on Pepper exported by Sea from the British Port of Cochin."

The Motion was carried, and the Bill read a second time.

SMALL CAUSE COURTS (MOFUSSIL).

The Order of the Day being read for the third reading of the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter"—

MR. HARINGTON moved that the consideration of this Bill be postponed till after the Order of the Day for the adjourned Committee on "The Indian Penal Code" was disposed of.

Agreed to.

PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Code.

Chapter XIX (Of the Criminal Breach of Contracts of Service) was passed after the omission of Section 2 (relating to breach of contract made in India to serve on board of any vessel) as being sufficiently provided for in the Merchant Seamen's Act.

Chapter XX (Of offences relating to Marriage) was passed after the omission, on the Motion of Mr. Erskine, of the following Explanation attached to Section 7, as relating only to points of procedure :—

"No prosecution for the offences defined in Sections 6 and 7 shall be instituted, except by the husband of the woman."

MR. ERSKINE then observed that, as the Members could not have perused the voluminous papers on this subject recently laid upon the table, and as he had looked into them as fully as the time allowed, it might be right to mention that the correspondence did not seem to suggest much matter for discussion in connection with this Code. A great part of the correspondence was occupied with several suggestions for reforming in various ways the prevailing immoralities of the people. But those were questions which it was rather in the province of the Executive Government to deal with. Another portion of the correspondence was occupied with suggestions as to who should prosecute in cases of this kind, to what extent punchayets should be encouraged to interfere, by what authorities trials should be held, and how sentences should be carried out. But these were

matters rather for consideration in connection with the Criminal Procedure Bill. As regards the punishments which should be inflicted for this offence, there seemed to be an opinion, on the part of many Officers, that male offenders should in aggravated cases be flogged, and this opinion was supported by more than one Member of the Government. But this matter also would now fail to be considered in connection with the separate Bill about flogging. The only other suggestion as to the penalties to be awarded to offenders of this class was one which he could not personally propose to the Council, and did not suppose they would be likely to acquiesce in; but which also had the support of some Members of the Bombay Government, and ought therefore to be made known to the Council, namely, that female offenders should be punished by shaving the head. He certainly could not propose this himself, and did not expect that it would meet with approval in the Council. But since it had received support in such high quarters, as reported in papers which Members could hardly have gone through, he deemed it his duty just to allude to it.

Section 1 of Chapter XXI (defining defamation) was passed after amendments in Explanation 1.

Sections 2 to 4 were passed as they stood.

Section 5 provided as follows :—

"It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings; but in any case in which the Court before which such proceedings is had shall by order have prohibited the publication of the proceedings, it may be defamation to publish such report before the prohibition has been withdrawn or the case has been finally disposed of by that Court, or in the case of proceedings preliminary to a trial in another Court, before the conclusion of the trial."

THE CHAIRMAN moved the omission of all the words after the words "result of any such proceedings" in the 4th and 5th lines, as the words in question provided rather against contempt of Court than defamation.

Agreed to.

Mr. Erskine

Sections 6 to 9 were passed as they stood.

Section 10 was passed after a verbal amendment and the addition of the following Illustration :—

"A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here if the imputation is made in good faith and for the public good, A is within the exception."

Section 11 was passed after the addition of the words "or for the public good."

Sections 12 to 14 were passed as they stood.

Chapter XXII (Of Criminal Intimidation, Insult, and Annoyance) was passed as it stood.

Chapter XXIII (Of Attempts to commit Offences) was passed after verbal amendments.

THE CHAIRMAN moved the introduction of the following new Section after Section 4 of Chapter III :—

"In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years."

Agreed to.

THE CHAIRMAN moved the omission of the sixth description of punishment ("Flogging") from Section 1, and of Sections 8 and 22 of the same Chapter which also related to flogging.

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after Section 7 of Chapter V:—

"Whenever any person, who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of his abetment is committed, he shall be deemed to have committed such act or offence."

Agreed to.

SIR CHARLES JACKSON said, he would now beg to call the attention of the Committee to Section 29 of Chapter XI, which had, at his request, been postponed for reconsideration.

The question which this Clause raised was, whether Judges were to be exposed to Criminal prosecution on such a charge as that mentioned in this Section, namely, pronouncing decisions which they knew to be contrary to law. He wished to guard himself against the possibility of its being supposed that he had any personal feeling in the matter, or that he had any wish to exempt Judges from Criminal accusations or proceedings when they acted criminally. Shortly after this Code would come into operation, and certainly long before it would be understood by the people, he should have left India, and therefore the matter would not affect him personally; and it was not any desire to exempt Judges from punishment, if criminal, that now actuated him, but a desire to keep them in the position they now held and not to subject them to the operation of a vague and novel law. The question now was, whether this Section should be allowed to stand or not. It was as follows:—

"Whoever, being a public servant, makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

What he objected to were the words "which he knows to be contrary to law." The Section did not mention one word of corruption or of malice. If the word "corruptly" were introduced, then it would be necessary for the prosecutor to show that the Judge received a bribe or some other gratification, or was influenced by some other corrupt motive; if "maliciously" were introduced, the Judge would be protected by the necessity for proving malice. But, no, it simply rested on the vague words "which he knows to be contrary to law." Now he thought that, if any Judge were charged with an offence under this Section as now framed, the presumption would be against him, and it would be extremely difficult for him to prove that he did not know he was acting contrary to law. It was true that Section 2, Chapter IV provided that—

"Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith, he believes to be given to him by law."

But that Section would be no answer to such a charge, which in itself excluded all idea of good faith. But it might be said, "Surely you do not mean to exempt Judges from prosecution when they are not acting on good faith." But that was not the question. The question was, whether Judges ought to be exposed to vague charges of this sort which it would be impossible for them to meet, for how could a Judge state that he was ignorant of the law? The framers of the Code might have taken the precaution to protect Judges to some extent by providing that no proceedings of this kind should be taken, unless they were instituted by the Advocate General or the Government. But as the Section now stood, any unsuccessful suitor might take his revenge—and a sweet one it would be—by dragging a Judge into Court, and placing him as a Criminal at his own bar. He could not conceive any thing more incongruous than this. He would put the case in this way. He would suppose, trusting to be pardoned for putting such a case, namely, that his Honorable and learned friend, the Chief Justice, were to make a mistake in giving a decision, and the disappointed suitor brought a charge against him of having passed a decision which he knew to be contrary to law. He would first like to know, though it was rather a question of procedure than one affecting this Code, who was to try his Honorable and learned friend? Would he be tried by his two Puisne Judges, or would some special authority be provided for that purpose?

SIR BARNES PEACOCK said, he should be tried by a Judge and Jury.

SIR CHARLES JACKSON said, whatever the result would be, he felt sure that his Honorable and learned friend would not sit on the bench a day longer after he had been exposed to the indignity of such an accusation. Again, just fancy the body of evidence that would be brought against his Honorable and learned friend on

such a charge as this. It would no doubt be proved that he had devoted the greater part of his life to the study of the law, that he was remarkable for his laborious study of law, that he had got into a great business in England and was always chosen to argue questions of law, that he came out here and was for eight years Chief Legislator and Chief Justice, and that this very Code was chiefly prepared and amended by him, and that indeed he might be called the actual framer of the Code. On such a mass of evidence, the Judge would be bound to sum up to the Jury, that it was very improbable that his Honorable and learned friend could be ignorant of law. The presumption would be that he was not ignorant of law. And on the other hand it would be very difficult for any Judge to prove that he did not know he was acting contrary to law.

Under these circumstances, he (Sir Charles Jackson) thought that this Section was altogether objectionable. The principle ought to be to protect Judges from vexatious and harassing charges of this kind. He admitted that Judges who acted corruptly or maliciously ought to be punished, but the mere vagueness of the Section, as it now stood, would be a temptation to disappointed suitors. The framers of the Code had departed from the principle of the English law in this respect, and had proceeded on their own crude notions of the fitness of things. He asked the Council to look into the history of their own country, and see whether it had ever been found necessary there to expose Judges to such charges as this—charges which they could never directly refute—and if not, why should Judges here be less protected? The protection they enjoyed in England had never been abused, and the history of the world did not show any body of men more respected than the English Judges, since the time they were rendered independent of the Crown.

He had looked into a great number of authorities on this point, but he would not trouble the Council by citing many of them. He would only draw attention to two cases. The first was the case of Garnett *versus* Ferraud in Vol. VI of Barnewall and Cresswell's Reports. It was an action brought against a Coroner for turning the plaintiff out of his Court. The Chief Justice, Lord Tenterden, in delivering the judgment of the Court, observed as follows :—

"This freedom from action and question at the suit of an individual is given by the law to the Judges, not so much for their own sake, as for the sake of the public, and for the advancement of justice, that being free from actions, they may be free in thought and independent in judgment, as all who are to administer justice ought to be. And it is not to be supposed before-hand, that those who are selected for the administration of justice will make an ill-use of the authority vested in them. Even inferior Justices, and those not of record, cannot be called in question for an error in judgment, so long as they act within the bounds of their jurisdiction. In the imperfection of human nature, it is better, even, that an individual should occasionally suffer a wrong than that the general course of justice should be impeded and fettered by constant and perpetual restraints and apprehensions on the part of those who are to administer it. Corruption is quite another matter; so, also, are neglect of duty and misconduct in it. For these, I trust, there is and always will be some due course of punishment by public prosecution."

The other was the case of the King *versus* Skinner as given in Loffts' Reports, on a Motion to quash an indictment against the defendant, a Justice of the Peace, for scandalous words spoken by him in a general Sessions of the county, in which he told the Grand Jury, "You have not done your duty; you have disobeyed my commands: you are a seditious, scandalous, corrupt, and perjured jury." In that case, the Judge, Lord Mansfield, observed as follows :—

"I am willing, as neither Serjeant Davy, nor Mr. Buller, (Counsel in support of the indictment) find any precedent in the History of England, for an indictment of this kind, to give them time till next Term to find any.

What Mr. Lucas (Counsel against the indictment) has said, is very just; neither party, witness, counsel, jury, or judge, can be put to answer, civilly, or criminally, for words spoken in Office. If the words spoken are opprobrious or irrelevant to the case, the Court will take notice of them as a contempt, and examine on information. If any thing of *mala mens* is found on such enquiry, it will be punished suitably.

"The words are extremely improper. If the party were not a Borough Justice, I should think there might be grounds to apply to the great seal to remove him from his office. But to go on an indictment, would be subversive of all ideas of a constitution. If any precedent should be found, you should have time to make use of it; otherwise it would be proper to quash the indictment immediately."

That was the distinction which he (Sir Charles Jackson) wished to draw. Let him not be misunderstood. It was not his wish to protect Judges from all Criminal indictments. But he thought that they were entitled here, as in England, to protection for all things said or done by them, even erroneously or irregularly, if said or done in office and within their jurisdiction. A good deal had been said at different times about the independence of Judges as regarded the Government. That would cease as soon as the amalgamation of the Courts took place, for the Government of India would then have the power of suspending any Judge it thought fit. But Judges should be protected against other influences than the Government, and particularly against the unscrupulous attacks, to which they would be exposed under this Section, of disappointed suitors in their Courts. He was disposed to move the omission of the Section.

THE CHAIRMAN said, he confessed he did not quite agree with his Honorable and learned friend in his remarks with reference to this Section. It appeared to him that, if a Judge corruptly gave a decision which he knew to be contrary to law, he ought to be punished.

SIR CHARLES JACKSON said, the word "corruptly" was not in the Section. The insertion of some such words was one of the very points he was arguing for.

THE CHAIRMAN said, he did not see how a Judge could give a decision which he knew to be contrary to law without some wilful or corrupt motive. He had no objection to insert the word "corruptly" to meet the views of his Honorable and learned friend. The words used in the corresponding Section of the Original Code were "knows to be unjust." The following were the remarks of the Law Commissioners on considering the observations which had been made upon the Penal Code as originally published :—

"The next Clause 142 provides that whoever, being a Judge pronounces on any question which comes before him in any stage of any judicial proceeding, a decision which he knows to be unjust, shall be punished with simple imprisonment which may extend to two years, or fine, or both. Objections to this Clause are made by many officers which may be summed up in the question of Sir H. Seton, 'who is to decide what is unjust, and how is the knowledge of it to be proved'? Her Majesty's Justices are required by their oath 'to do equal law and execution of right,' that is, as it is expressed in the margin, to do justice to all Her Majesty's subjects, and it is provided in the Digest that all who shall be found in default in any of the points contained in the oath, shall be punished with imprisonment not exceeding three years and fine, with a saving Clause that 'no judicial officer shall be criminally liable in respect of any error in giving judgment.' It seems to us that a Judge, who by his decision, does injustice not by error of judgment, is in other words a Judge who pronounces a decision which he knows to be unjust. We apprehend that the expression 'which he knows to be unjust' was adopted purposely to exclude the excuse of an error of judgment, and that the meaning is, that a Judge who pronounces a decision which is unjust without the excuse of an error of judgment, must be presumed to have pronounced the decision conscious of its injustice, and shall be liable to punishment accordingly. So understood, the Clause appears to us no more exceptionable than the English law in the same matter, as it is expressed in the Digest. Mr. A. D. Campbell suggests that the words 'contrary to law' should be substituted for 'unjust,' as it is not intended that the Code should meet individual opinions of justice, except 'as these may coincide with the sentiments of the Legislature,' but such a substitution would narrow the provision to a degree that would greatly impair its efficacy, for many a decision may be 'unjust' which cannot be said to be contrary to any law, except the general law which requires justice to be done."

It appeared, therefore, that the Law Commissioners were of opinion that, although no Judge should be liable to punishment for an error in judgment, still he ought to be so for any wrongfully corrupt decision. When this matter was before the Select Committee, it was consi-

dered safer to omit the word "unjust," and to substitute the words "contrary to law," as more correctly defining the offence, and he had no objection to insert the word "corruptly," if his Honorable and learned friend wished.

SIR CHARLES JACKSON suggested the addition of the words "or maliciously."

THE CHAIRMAN said, he was quite willing to insert those words, but still that would not remove his Honorable and learned friend's principal objection.

SIR CHARLES JACKSON.—No, but it will remove some of my objections

THE CHAIRMAN continued—It appeared to him that it ought to be provided in the Code of Criminal Procedure, that such accusations should be brought by some competent Government Officer, the Advocate General for instance, and not by any common informer. He thought, however, that if a Judge were to pass a decision which he knew to be contrary to law, whether he was a Chief Justice or a Judge of the Supreme Court, he ought to be equally liable to punishment as a Moorsiff. In England the laws provided a punishment for any Magistrate or Justice of the Peace passing a judgment which he knew to be contrary to law, a Criminal information being filed against him in the Court of Queen's Bench by the Attorney General. If, therefore, a Magistrate or Justice of the Peace could be brought to trial, he saw no reason why a Judge should not be so as well, provided the case was not one of error or mistake. In the seventh Report of the English Law Commissioners, in which they followed up what was stated in their fifth Report, it was laid down:—

"Justices who shall be found in default in any of the points contained in the oath required to be taken by them, by a Statute of the 18th year of the reign of King Edward III, shall incur the penalties of the twentieth class."

The following Article provided:—

"Any other judicial officer who shall, in violation of his duty as such officer, commit any excess of authority with any corrupt or injurious intention, or wilfully neglect to execute his duty as such officer to the hindrance of justice, shall incur the penalties of the twentieth class."

Then there was a similar Article relating to any Judicial Officer

"abusing his authority by doing or omitting to do any act or thing wilfully and corruptly, or with the malicious intent to oppress or injure any other person, in violation of his duty as such officer;"

and another Article

"provided that no judicial Officer shall be criminally liable in respect of any error in giving judgment."

SIR CHARLES JACKSON said that his objections had, in a great measure, been removed by the observations and proposed amendments of the Honorable and learned Chairman. If the words "corruptly or maliciously" were inserted, the sting of the objection would be destroyed. It would also be a great safeguard if some provision were made in the Criminal Procedure Code for the prosecution of such offences by the Government alone, and he now understood that it was conceded this might be provided. His argument was that the Clause, as it before stood, threw the onus of proof on the Judge, of showing that he was ignorant of the law Whereas, as the Clause was now proposed to be altered, the Judge could fall back upon the exception in the previous part of the Code and rely on his acts being done in good faith, and the other party would be bound to show some malice or corrupt intention in support of the charge. For these reasons he saw no objection to the Section as proposed to be altered, taken together with Section 2 Chapter IV, being retained in the Code.

SIR BARTLE FRERE must say that he agreed with the Honorable and learned Judge opposite (Sir Charles Jackson) that, looking to the risk of having the acts of Judges challenged in the way he had mentioned, he (Sir Bartle Frere) would rather run the chance of seeing Judges escape punishment altogether than see

them exposed to accusation at the instance of a malicious suitor. Cases in point were not unknown even in England. One, if he recollected rightly, happened in Liverpool, where the Judge of a Small Cause Court, not from malice or corruptly, but simply from temper, pronounced decisions contrary to law. The presumption was irresistible that the Judge must in his calmer moments have known them to be contrary to law. Yet it was not considered necessary to provide any heavier punishment than to remove such a Judge from the Bench. This he thought was ample even in the cases in which a Judge might decide contrary to law, knowingly, but not corruptly or maliciously. Cases of malversation from malice or corruption stood on a different footing, and might be punished under other Clauses. He should much prefer, therefore, if the law were allowed to remain as at present, or that at least no means were afforded for challenging the decisions of Judges as a Criminal offence, except at the instance of the Crown.

The Section as proposed to be amended was passed accordingly.

The postponed Section 30 (relating to commitment for trial or confinement by a person having authority) was passed after a similar amendment.

Section 31 and the Preamble were passed after verbal amendments, and the Title was passed as it stood.

The Council having resumed its sitting, the Bill was reported.

SMALL CAUSE COURTS (MOFUSSIL).

The Order of the Day being read for the third reading of the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter"—

MR. HARINGTON moved that the Council resolve itself into a Committee for the purpose of considering proposed amendments therein.

Agreed to.

MR. HARINGTON said, at this late hour, and looking to the quantity of business before the Council which still remained to be disposed of, he would not occupy the time of the Council with any lengthened remarks, but would content himself with stating briefly that the chief object aimed at in the amendments to which he was anxious to obtain the consent of the Council, was to confine the Bill to giving power to the Executive Governments with the previous sanction of the Supreme Government, rendered necessary on account of the expense, to constitute Courts of Small Causes very much after the model of the Small Cause Courts at Calcutta, Madras, and Bombay, and invested with similar jurisdiction, wherever there was found to be sufficient work for Courts of that description. Whatever difference of opinion might exist on some points connected with the Bill, he believed that they were all agreed as to the urgent necessity that there was for Courts constituted as proposed, and as to the advantages which might be expected to result from the establishment of such Courts. To the establishment of Courts so constituted, he thought that no one would object. He had reason to know that the Bill, altered as proposed, would be very acceptable to the local Governments on this side of India, and he would fain hope that it would not be otherwise than acceptable to the other local Governments. He might here remark, in reference to those Governments, that, in so far as the constitution of new Courts was concerned, the Bill was entirely of a permissive character. It necessitated no action whatever. The several local Governments were left to exercise their own discretion as regarded both the first introduction of the Bill into the Territories under their Governments, and the subsequent extension of the sphere of its operations. With these few observations he would proceed to move the amendments contained in the notice-paper which had been printed and circulated.

Section 1 provided as follows:—

"It shall be lawful for the Executive Government of any of the said Presidencies or of any place, with the previous sanction of the

Governor General in Council, to constitute Courts of Small Causes, with the required establishment of Officers, at any place within the limits of their respective Governments, for the trial of suits under this Act. Whenever any such Court may be so constituted, the Executive Government shall fix the territorial jurisdiction of such Court, and may, from time to time, alter the same as may appear proper.

MR. HARINGTON moved the insertion of the words "and to abolish any Court so constituted" after the word "Act" at the end of the first sentence.

Agreed to.

THE CHAIRMAN moved the addition of the following Proviso to the words just carried :—

"Provided that no Judge of any Court constituted under this Act shall exercise any civil jurisdiction except under the provisions of this Act."

Agreed to.

MR. HARINGTON moved that the remainder of the Section stand as a separate Section.

Agreed to.

Section II was passed after an amendment.

Section III provided as follows :—

"Every Court of Small Causes, constituted under this Act, shall have cognizance of all such suits as are mentioned in the last preceding Section, if the cause of action shall have arisen, or the defendant at the time of the commencement of the suit shall dwell or personally work for gain within the local limits of the jurisdiction of such Court."

MR. HARINGTON moved the omission of the words "the cause of action shall have arisen, or."

The Motion was carried, and the Section as amended then passed.

Section IV provided that the Small Cause Courts should "be subject to the general control and orders of the Judge of the District and of the Sudder Court."

THE CHAIRMAN moved the omission of the words "of the Judge of the District and."

The Motion was carried, and the Section as amended then passed.

Section V provided as follows :—

"Whenever a Court of Small Causes is constituted under this Act, all suits cognizable under the provisions of this Act, for any amount exceeding twenty Rupees, which shall arise within the limits of the jurisdiction of such Court, shall be heard and determined in such Court, and shall not be cognizable in any other Court."

MR. HARINGTON moved the omission of the words "for any amount exceeding twenty Rupees."

MR. ERSKINE pointed out that there was an inconsistency between this Section and Section III.

After some conversation, the Section was amended as follows, on the Motion of Sir Barnes Peacock :—

"Whenever a Court of Small Causes is constituted under this Act, no suit cognizable by such Court under the provisions of this Act shall be heard or determined in any other Court having any jurisdiction within the local limits of the jurisdiction of such Court of Small Causes."

Section VI after a verbal amendment was added as a Proviso to the preceding Section.

Section VIII was passed after the substitution of "Sudder Court" for "Judge of the District" as the authority who should control the appointment of the time at which any Court constituted under the Act, if directed to be held at more places than one within the local limits of its jurisdiction, should hold its sittings in every such place.

Section IX provided as follows :—

"The procedure to be observed in the trial of cases cognizable under this Act, shall be that prescribed in Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter), in so far as the same may be applicable and necessary. Provided that in all suits under this Act the summons to the defendant shall be for the final disposal of the suit, and provided also that, at the time of passing a decree under this Act, the Court may, on the verbal application of the party, in whose favor the decree is passed, direct immediate execution of the same by the issue of a warrant directed, either generally against the personal property of the judgment-debtor wherever it may be found within the local limits of the Court's jurisdiction, or specially against the personal

property belonging to the judgment-debtor within the same limits which may be indicated by the judgment-creditor."

MR. HARINGTON moved the omission of the above Section, and the substitution of the two following Sections :—

"In all suits under this Act the summons to the defendant shall be for the final disposal of the suit, and no written statement other than the plaint shall be received unless required by the Court."

"At the time of passing a decree under this Act, the Court may, on the verbal application of the party, in whose favor the decree is passed, direct immediate execution of the same by the issue of a warrant directed either generally against the personal property of the judgment-debtor wherever it may be found within the local limits of the Court's jurisdiction, or specially against any personal property belonging to the judgment-debtor within the same limits which may be indicated by the judgment-creditor."

Agreed to.

MR. HARINGTON moved the addition of the following words to Section XI .—

"But no new trial shall be granted unless the party applying for the same shall, with his application, deposit in Court the amount for which judgment shall have been given against him including the costs (if any) of the opposite party."

The Motion was carried, and the Section as amended was then passed.

Section XII was passed after a verbal amendment.

Section XIX (making final the decision of any existing Court subordinate to a District Court in suits below twenty Rupees) was omitted, on the Motion of Mr. Harington.

Section XX proposed to make final the decision of any Court subordinate to the Sudder Court in suits below five hundred Rupees, and Section XXI to allow a reference to the Sudder Court of questions under the preceding Section.

MR. ERSKINE observed that, whereas the rest of the Bill was permissive and special in its provisions, these Clauses were general and compulsory.

THE CHAIRMAN suggested that, as these Sections had no connection with the subject of this Bill, although they were of an analogous character, they should be omitted from the present Bill, and introduced in the form of a separate Bill.

MR. HARINGTON said, he was willing to adopt the suggestion of the Honorable and learned Chairman, and he would bring in a Bill, embodying the Sections in question, at the next Meeting of the Council.

The Sections were accordingly omitted.

MR. HARINGTON moved the addition of the following Section to the Bill :—

"Except as hereinbefore provided, the provisions of Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter) shall be applicable to cases cognizable under this Act in so far as the same may be applicable and necessary."

Agreed to.

The Council having resumed its sitting, the Bill was reported with amendments.

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for the third reading of the Bill.

PAPER CURRENCY.

SIR BARTLE FRERE moved that the Bill "to provide for a Government Paper Currency" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Sconce, Mr. Erskine, and the Mover.

Agreed to.

STAGE CARRIAGES.

MR. HARINGTON moved that the Bill "for licensing and regulating Stage Carriages" be referred to a Select Committee consisting of Mr. Forbes, Mr. Erskine, and the Mover.

Agreed to.

CUSTOMS DUTY ON PEPPER.

MR. HARINGTON (in the absence of Mr. Forbes) moved that the Bill

"to alter the Customs Duty on Pepper exported by Sea from the British Port of Cochin" be referred to a Select Committee consisting of Mr. Forbes, Mr. Erskine, and Mr. Harington.

Agreed to.

RECOVERY OF RENTS (BENGAL.)

MR. SCONCE moved that the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal,") be referred to a Select Committee consisting of Mr. Beadon, Mr. Harington, and the Mover.

Agreed to.

EMIGRATION TO ST. KITTS.

SIR BARTLE FRERE moved that Mr. Beadon be requested to take the Bill "relating to the Emigration of Native Laborers to the British Colony of St. Kitts" to the Governor-General for his assent.

Agreed to.

The Council adjourned at 5 o'clock on the Motion of Sir Bartle Frere, till Wednesday, the 3rd of October, at 11 o'clock.

Wednesday, October 3, 1860.

PRESENT:

THE Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq., and
Hon'ble C. Beadon,	C. J. Erskine, Esq.
H. B. Harington, Esq.,	

PENAL CODE.

THE CLERK presented to the Council, a Petition signed by 332 British and Christian inhabitants of Calcutta against "The Indian Penal Code."

THE VICE-PRESIDENT moved that the above Petition be printed, and that it be now read at the table by the Clerk of the Council.

The Motion was carried, and the Petition read accordingly.

PORT DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. HARINGTON, in moving the first reading of a Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George," said that the Honorable Member for Madras, by whom this Bill had been prepared, was still, he regretted to say, prevented by indisposition from attending the Council, and he had therefore asked him (Mr. Harington) to move the first reading of the Bill. The object of the Bill was simply to carry out the provisions of Section XLI Act XXII of 1855 (for regulating Port and Port-dues) in respect to two Ports in the Madras Presidency, named Calingapatam and Munsoorcottah. The Council were aware that similar Acts had already been passed at different times in regard to other Ports in the three Presidencies. Looking to the number of vessels now resorting to the Ports of Calingapatam and Munsoorcottah, and to the value of the Export and Import Trade thereat, it was considered that the time had arrived for declaring those Ports subject to the provisions of Act XXII of 1855. This was the opinion of the local Authorities and of the Government of Madras, and the present Bill was introduced at the request of that Government. The Bill had been framed on Acts II and VII of 1858.

The Bill was read a first time.

CIVIL PROCEDURE.

MR. HARINGTON moved the first reading of a Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)." He said, it must be scarcely necessary for him to remind Honorable Members that the amendment of Act VIII of 1859, known as the Code of Civil Procedure, which was proposed to be made by this Bill, originally formed the subject of two Sections in another Bill before the Council, entitled a Bill for the establishment of Courts of Small Causes beyond the local

limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter. The Sections were not in that Bill as it was read a first and second time, but were introduced into it when the Bill was passing through a Committee of the whole Council on the Motion of the Honorable and learned Vice-President. He (Mr. Harington) concurred in the rules contained in the two Sections in question, and he had willingly assented to their being introduced into the Small Cause Courts Bill. On the recommittal of that Bill, however, the Sections were considered to be out of place in it, and they were ordered to be struck out, but upon the understanding that a separate Bill should at once be introduced in which they should be embodied. This had been done in the Bill of which he now moved the first reading.

Section I of the Bill provided that—

"No special appeal shall lie from any decision or order which shall be passed on regular appeal after the passing of this Act by any Court subordinate to the Sudder Court in any suit of the nature cognizable in Courts of Small Causes under Act of 1860, when the debt, damage, or demand for which the original suit shall be instituted shall not exceed five hundred Rupees. But every such order or decision shall be final."

The object of the Legislature in allowing a special appeal in cases of a comparatively trifling nature and amount equally with larger and more important cases was to keep the law settled, which could only be done by devolving the duty of construing the law in the last resort upon the highest Civil Tribunal. In no other way could a uniform administration of the law, which was so essential to the well-being of society, and which had such an important bearing on mercantile and other ordinary transactions of daily life, be secured. But he thought that Honorable Members would concur with him in opinion that the decisions of the Sudder Court on points of law in the cases which would still be open to special appeal to that Court, other than the cases in which it was proposed to abolish such appeal, would suffice to keep the law settled in the latter cases also, and would furnish a large body of precedents for the guidance of the subordinate Courts in disposing of those cases; and as the remaining Sections of the Bill provided for the lower Court stating a case for the opinion of the Sudder Court whenever any question of law or of usage having the force of law, or the construction of a document affecting the merits of the case, arose in respect to which the presiding Officer might entertain reasonable doubts, it appeared to him that the Bill did all that justice could require to secure a correct decision in such cases on questions of both law and fact. He was unable to say what would be the extent of the relief which the Bill would be the means of affording to the Sudder Courts, but he believed that it would be considerable; and whatever might be the amount, he had reason to know that it would be very acceptable to the Sudder Courts on this side of India.

The Bill was read a first time.

PENAL CODE.

The Order of the Day being read for the third reading of "The Indian Penal Code"—

THE VICE-PRESIDENT moved that the Bill be recommitted to a Committee of the whole Council for the purpose of considering proposed amendments therein.

A verbal amendment was made in the Preamble.

After some verbal amendments in Section 1—

THE CHAIRMAN said, it was a question whether the Code should be extended to the Straits Settlements or not, as he observed it was the intention of the Home Government to remove them from under the control of the Government of India. He thought that we ought to except those Settlement from the operation of the Code. We should probably know next year the determination of the Home Government in the matter. If the Straits

Settlements should continue under the Government of India, then they ought to come under the operation of the Code like any other part of India, and the Code could then be extended to them. Whereas if the Code were now extended to those Settlements, and they should be withdrawn from the control of the Government of India, they would not derive any benefit from any Acts passed in amendment of the Code subsequent to the transfer. He therefore moved an amendment to the above effect.

The Motion was carried, and the Section as amended then passed.

Verbal amendments were made in Sections 3 and 4, and in Illustration (*b*) of Section 6.

Section 14 provided as follows:—

"The words 'servant of the Queen' denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Vic. c. 106, entitled 'An Act for the better Government of India.'"

THE CHAIRMAN moved the addition of the words "or by or under the authority of the Government of India or any Government."

The Motion was carried, and the Section as amended then passed

Section 15 (defining "British India") was passed after the addition of the words "except the Settlement of Prince of Wales' Island, Singapore, and Malacca."

A verbal amendment was made in Section 18.

THE CHAIRMAN moved the introduction of the following new Sections after Section 24:—

"A person is said to do a thing 'fraudulently' if he does that thing with intent to defraud, but not otherwise."

"A person is said to 'have reason to believe a thing' if he has sufficient cause to believe that thing, but not otherwise."

Agreed to.

Chiefly verbal amendments were made in Sections 35, 36, and 52.

Section 53 authorized the Government to commute a sentence of transportation for life or imprisonment not exceeding seven years.

After some verbal amendments—

THE CHAIRMAN moved the substitution of fourteen years for seven years.

The Motion was carried, and the Section as amended then passed.

Section 60 provided for the forfeiture of property belonging to offenders punishable with death, or with transportation or imprisonment for a term of four years or upwards.

MR. ERSKINE did not think that an offence punishable with four years' imprisonment should involve the forfeiture of the offender's property.

After some discussion, the Section was passed, with the substitution of seven years for four years, so as to include all cases in which a person might be transported.

Chiefly verbal amendments were made in Sections 69, 88, 89, 92, 97, 98, 103, 105, and 106.

MR. ERSKINE said, he had suggested before the advisability of introducing some provision to make the offering of a bribe penal. He had since observed, however, that provision to this effect had been contained in the two Illustrations (*a*) of Sections 5 and 13 Chapter V of the Code as originally printed. He was not aware of the reason of the omission of those Illustrations by the Select Committee, and if the Council had no objection, he should propose their restoration.

The Motion was carried, and the Illustrations with modifications, introduced into Sections 107 and 114.

Verbal amendments were made in Sections 111 and 113.

Section 116 provided for the punishment of

"Whoever voluntarily conceals, by any act or illegal omission, the existence of a design to commit an offence punishable with death or transportation for life."

THE CHAIRMAN moved the substitution, for the words quoted, of the words—

"Whoever intending to facilitate or knowing it to be likely that he will thereby facili-

tate the commission of any offence punishable with death or transportation for life."

The Motion was carried, and after a similar amendment in the Illustration, the Section was passed.

Similar amendments were made in Sections 117 and 118.

Verbal amendments were made in Sections 119, 122, 152, 157, and 159.

The word "simple" was inserted before the word "imprisonment" in Sections 171 to 173.

Chiefly verbal amendments were made in Sections 177, 189, 191, 194 to 198, and 207.

The consideration of the Code having been postponed, the Council resumed its sitting.

POLICE.

THE CLERK reported to the Council that he had received from the Home Department certain papers relating to the Police in India.

SIR BARTLE FRERE moved that the above papers be printed.

Agreed to.

The Council adjourned at 6 o'clock, on the Motion of Sir Bartle Frere, till to-morrow, at 10 o'clock.

Thursday, October 4, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H B. E. Frere,	H. B. Harington, Esq, and
Hon. C. Beadon,	C. J. Erskine, Esq.

PENAL CODE.

The Order of the Day being read for the adjourned recommittal of "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Code.

Verbal amendments were made in Sections 213, 219, 220, and 222.

Section 237 provided as follows :—

"Whoever having any counterfeit coin, which at the time when he became possessed of it, he knew to be counterfeit, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if he delivers the same to any other person as genuine, or attempts to induce any other person to receive it as genuine, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

THE CHAIRMAN moved the insertion of the words "fraudulently or with intent that fraud may be committed" between the words "counterfeit" and "delivers," and the omission of the words "shall be punished with imprisonment of either description, for a term which may extend to three years, and shall also be liable to fine; and if he delivers the same to any other person as genuine, or attempts to induce any other person to receive it as genuine."

The Section, as proposed to be amended, was passed accordingly.

Similar amendments were made in Sections 238, 240, 241, 248 to 251, and verbal amendments in Sections 244 and 245, 253 to 261, 269, 270, 272, 290 and 298.

Section 306 was passed after the omission of the words "attempts to commit culpable homicide," and also of Illustration (*b*) as unnecessary and likely to mislead.

Verbal amendments were made in Sections 310, 344, 348, 352, 366, 378, 384, 401, 402, and 408; the heading "Of Dishonest Misappropriation of Property" being altered into "Of Criminal Misappropriation of Property."

Sections 419 to 421, under the heading "of Fraudulent Deeds and Dispositions of Property," severally provided that the offender "shall be punished with imprisonment of either description, for a term which may extend to three years, and shall also be liable to fine," and Section 422 under the same heading provided the same punishment, except that the term of imprisonment was fixed at two instead of three years.

After some verbal amendments—

THE CHAIRMAN moved an amendment which was carried, and which made the Sections severally conclude as follows :—

"shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The consideration of the Code having been postponed, the Council resumed its sitting.

The Council adjourned at half past 5 o'clock, on the Motion of Sir Bartle Frere, till to-morrow, at 1 o'clock.

Friday, October 5, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq., and
H. B. Harington, Esq,	C. J. Erskine, Esq.

PENAL CODE.

The Order of the Day being read for the adjourned recommittal of "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Code.

Chiefly verbal amendments were made in Sections 368, 423, 428, 429, 437, 441, 443, 461, 462, 465, 466, 470, 473, 483, 485, 486, 490, 491, and 499.

Section 464 (forging or using a forged document with intent to injure or deceive), was omitted as included in Section 470.

Section 493 (cohabitation caused by a woman deceitfully inducing a belief of lawful marriage), which was the converse of Section 492 (cohabitation caused by a man deceitfully inducing a like belief), was omitted as unnecessary.

Section 497 provided as follows :—

"Whoever has sexual intercourse with the wife of another man without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."

THE CHAIRMAN moved the insertion of the words "a person who is and whom he knows or has reason to belive to be" after the words "Whoever has sexual intercourse with" in the beginning of the Section.

Agreed to.

THE CHAIRMAN moved the addition of the words "In such case the wife shall not be punishable as an abettor."

The Motion was carried, and the Section as amended then passed.

Section 498 provided as follows :—

"Whoever by force or fraud takes away or entices a married woman from her husband, or from any person having the care of her on behalf of her husband, or conceals or detains any married woman with intent that she may have illicit intercouse with any person, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both."

THE CHAIRMAN moved the omission of the above Section, and the substitution of the following :—

"Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with such intent any such woman, shall be punished, &c."

Agreed to.

MR. ERSKINE moved the introduction of the following new Section after Section 514 :—

"Whoever circulates or publishes any statement, rumour or report which he knows to be false, with intent to cause any officer, soldier, or sailor in the army or navy of the Queen to mutiny, or with intent to cause fear or alarm to the public, and thereby to induce any person to commit an offence against the State or against the public tranquillity, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both."

Agreed to.

Section 277 provided for the punishment of any person driving or riding

on a public way "in a manner so rash or negligent as to *indicate a want of due regard for human life, or in such a manner as is* likely to cause hurt or injury to any other person."

THE CHAIRMAN moved the substitution for the words in italics of the words "endanger human life or to be."

The Motion was carried, and the Section as amended then passed.

Similar amendments were made in Section 278, Sections 283 to 285, and Sections 334 to 336.

The Council having resumed its sitting, the Code was reported with amendments.

The Council adjourned at 5 o'clock (on the Motion of Sir Bartle Frere), till to-morrow, at 11 o'clock.

Saturday, October 6, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

His Excellency the Commander-in-Chief.
Hon'ble Sir H. B. E. Frere,
Hon'ble C. Beadon,
H. B Harington, Esq.,
A. Sconce, Esq.,
and
C. J. Erskine, Esq.,

EMIGRATION TO ST. KITTS.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor-General had assented to the Bill "relating to the Emigration of Native Laborers to the British Colony of St. Kitts."

SOOTANUTY, &c., TALOOKS.

THE CLERK presented to the Council a Petition of James Welch, Esq., Receiver of the estate of the late Rajah Rajkissen Bahadoor, praying for the passing of an Act to enable the Talookdars of Sootanuty of Baug Bazar and of Hoogul Coondy to realize their rents and dues.

MR. SCONCE said, the object of this Petition was to induce the Council to adopt a private Bill. They alleged that they were unable to adequately realize the rents due to them from their Talooks which were situated within Calcutta. He would at the present moment offer no opinion as to the existing state of the law. He would only say that this matter had been before the Lieutenant-Governor, and would read to the Council a letter written by His Honor on the subject. It was addressed to Rajah Radhakaunt Deb in reply to a memorial submitted by him. The letter was as follows :—

"I am directed to acknowledge the receipt of your letter, dated 1st September last, transmitting for submission a memorial representing the difficulty experienced by you in realizing the rents of your Talook Sootanuty, in Calcutta, and in reply to state that the Lieutenant-Governor considers the matter a fit one for the introduction of a private Bill into the Legislative Council.

You are recommended to petition the Council to pass a Bill, appending to your Petition a draft of such Bill as you wish for. This you had better procure to be prepared by Counsel.

The Lieutenant-Governor will request Mr. Sconce to give his attention to the Petition when presented."

At present it seemed to him (Mr. Sconce) premature to adopt the Bill and to bring it in for a first reading. It was a case which came before us as an *ex-parte* statement. It seemed to him that the proper course would be to print the Petition in order that the parties on the other side might be enabled to present a Petition containing their views on the subject. Standing Order No. XXXIII provided as follows :—

"Drafts or projects of laws proposed by private persons must be accompanied by a Petition, praying that the same may be taken into consideration by the Legislative Council, and shall be dealt with in the manner prescribed by these "Orders" under the head 'Petitions.'"

Under these circumstances he begged to move that the Petition be printed, which he believed was the first course prescribed by the Standing Orders with regard to Petitions.

Agreed to.

PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. HARINGTON (in the absence of Mr. Forbes) moved the second reading of the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George."

The Motion was carried, and the Bill read a second time.

CIVIL PROCEDURE.

MR. HARINGTON moved the second reading of the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

The Motion was carried, and the Bill read a second time.

MR. HARINGTON moved that the Standing Orders be suspended to enable him to carry the Bill through its remaining stages to-day. The Council were aware that the provisions of this Bill formed the subject of two Sections in the Small Cause Courts Bill from which they were struck out in Committee of the whole Council. The provisions in question had been before the public for the last sixteen months, and no objections had been taken to them.

MR. SCONCE seconded the Motion which was put and carried.

MR. HARINGTON then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Sections I to VIII were passed as they stood.

MR. ERSKINE moved the introduction of the following new Section after Section VIII :—

"Nothing in this Act shall extend to any decision or order passed on regular appeal by any Assistant Judge in the Presidency of Bombay."

In doing so, he said that it was only the peculiarity of the system prevailing in Bombay, of which he believed the Honorable Mover of the Bill was aware, that rendered the introduction of this Section necessary.

MR. HARINGTON said, he had no objection to the introduction of the proposed Section.

The Section was then put and carried.

Section IX and the Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried and the Bill read a third time.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

POLICE.

SIR BARTLE FRERE moved the second reading of the Bill "for the regulation of Police within any parts of the British Territories in India, to which it may please the Governor-General in Council to extend its provisions."

MR. HARINGTON said, had it not been the intention to prorogue the Council to-day for some weeks, he thought he should have ventured to ask the Honorable Member of Council who had charge of this Bill to allow his Motion for the second reading to stand over for a week at least, in order that, before affirming the principle of the Bill by allowing it to be read a second time, they might have had a little more time for considering the provisions of the Bill, and for making themselves acquainted with the reasons of the measure which they were informed would be found very fully stated in the Report of the Police Commission, and in the Resolution of Government appointing that Commission. These important papers had not yet been officially communicated to the Council.

SIR BARTLE FRERE here mentioned that the papers had been presented.

MR. HARINGTON remarked that the papers had not yet been printed and circulated, and he thought that they ought to have been placed in the

hands of Honorable Members in order that they might have had an opportunity of informing themselves of their contents before being called upon to vote on the Motion before the Council He need scarcely say that this Bill was a very important one; few more important Bills had ever come before the Council. The changes which the Bill proposed to make in the system of the Mofussil Police were very large, and would affect not only the character of the Police as a body, but also their duties, powers, and responsibilities. He was sure that the Council would agree with him that changes so vast and extensive as were proposed by this Bill should not be hastily introduced; in other words, that they should be adopted only after full enquiry into and ascertainment of what was defective in the existing system, and after careful and mature deliberation, and it appeared to him that this was especially necessary in the present case, because he had reason to know that many old and experienced officers, who differed materially on other matters, and some of whom preferred the Non-Regulation to the Regulation system, entertained very serious doubts whether the principles on which this Bill was stated to be based, however suited to England and Ireland and the three Indian Presidency Towns, were suited to the Mofussil Districts of this country. He was fully sensible of the great importance of having the Bill published at once for general information, in order that, when they resumed their sittings, they might have before them the opinions of the local Governments and of their subordinate Officers and of the public at large upon the various provisions of the Bill, and he for one should deeply regret if the publication of the Bill were delayed for weeks simply by reason of the sittings of the Council being suspended. Under these circumstances, although he must confess that the Motion for the second reading of the Bill to-day, before they had been placed in possession of the materials on which the Bill was founded, had rather taken him by surprise, he considered it to be quite consistent with his duty that he should support the Motion, but he did so on the understanding that he did not pledge himself to the details of the Bill, or indeed to the principles involved in it.

MR. SCONCE said, this was not a new Bill. It was an old friend with a new face. The Council would recollect that, just before the adjournment of the Council last year, we were pressed to pass the Madras Police Act; and though he believed he might say the Council entertained objections to pass a Bill of that kind as a general law; and some Members possibly thought the details of the Bill might be improved, nevertheless, under the urgency of the time and circumstances, the law, as submitted by the Madras Government, was adopted. Several Honorable Members of the Council, he believed, were of opinion that a change in the Police Administration, which was applicable to Madras, might not be inapplicable to the whole of India. Indeed we looked upon the Madras Bill in connection with the Code of Criminal Procedure which was at that time passing through a Committee of the whole Council; and, if he rightly recollected, the Council were prepared to embody in that Code such portions of the law enacted for Madras as should appear to be an improvement upon the system now in force elsewhere. Now as to the Bill before the Council, he desired to remark that so many different topics were mixed up in it that the more immediate object of its enactment appeared to be obscured. He was not substantially opposed to the principle advocated by the Honorable Mover of the Bill, which he took to be the reorganization of the Police; but the provisions embodied in the Bill were various and heterogeneous. First it provided for the constitution of the Police; another point related to the organization and government of the Police; another to Procedure; and another applied to subjects which were embraced and better provided for in the Penal Code now about to be passed into law by the Council. For example, the 19th Section of this Bill related to the unlawful assumption

of Police functions, the personation of Police, &c. Now he would ask the Council to refer to the Penal Code where there were better provisions for the punishment of cheating by personation. There was another Section of this Bill (Section XXII) relating to false or frivolous charges. He need not tell the Council that in the Penal Code there were provisions against making false charges. It appeared to him, therefore, that, while the Penal Code embodied the general law upon such points, it was inexpedient to introduce the same matter in a Police Bill. Again, Section XXXIV of this Bill declared a penalty for any party failing to obey a summons, an offence which was fully provided for in Section 174 of the Penal Code. Then there was another Section (XLIV) relating to prevarication by Police Officers in judicial trials. If we did not legislate for prevarication with respect to witnesses in general, as certainly we did not in the Code, he did not see why we should do so as regards the Police in this Bill. There were other instances which he might mention to the same end; and in the same manner he might refer to other points which more properly came under the Code of Criminal Procedure. He did not know if the Honorable Mover of the Bill had gone through that Code, which had received so much attention in a Committee of the whole Council this time last year. He (Mr. Sconce) could not however but express his strong conviction, that whatever Chapter of the Code we might chance to take up, contained in every way more satisfactory provisions than those laid down in this Bill.

He would not detain the Council unnecessarily long, but he might be allowed to say that all that had been done of late years to improve the Bengal Police had, in a measure, been ignored. He need not tell the Honorable and learned Vice-President that, in the course of the years 1857-58, very large charges had been incurred by the Government of India for improving the Bengal Executive Police. On the whole, taking the additional cost of Mohurrirs, Jamadars, Burkundazes, Darogahs, and Deputy Magistrates, no less a sum than about 7,69,000 Rupees were sanctioned by the Government in those two years. At the same time the total charge in the Regulation and Non-Regulation Provinces of Bengal, exclusive of Deputy Magistrates, was about 13,30,000 Rupees. His object in mentioning this was two-fold: *first*, we might reasonably expect to know what had been the result of those additional charges; and, *next*, a more important question even than that was to ask, if the Civil Police charges now amounted to 13½ lakhs, how far it was proposed to go under the new Bill? The Commission to whom the question was referred, and by whom this Bill had been drawn, had declined and were indeed at the moment unable to estimate the cost of the change which they recommended. But this scheme was prepared after the system lately introduced into Madras, and from the papers that had been printed he found that the new police was estimated at the rate of one man to every thousand of the population. Thus it was calculated that 22,000 men to be entertained at Madras would cost 24 lakhs of Rupees, or with necessary extra charges, in all 30½ lakhs. If the same estimate were adopted here, the cost of 40,000 men, which at the same rate should be required for a population of 40 millions, would amount to 57 lakhs of Rupees. It would appear then from the only data yet furnished as to the working of the new system, that, as regards Bengal, a Police expenditure, which at present amounted to 13½ lakhs, might be increased to 57 lakhs. What he entirely agreed in with the Honorable Mover of the Bill was that there should be a thorough reorganization of the Police Establishment which should secure the combined action of the whole body. At present the Police of every District, indeed of every Thannah, was unconnected, isolated, and independent; and certainly it would be a great improvement to combine the whole into one working body under a common head. He would remind the Council, however, that

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organization was quite a different matter from Procedure, and this Bill adopted both. He heartily approved of the organization provided by the Bill. The farther it was carried, the more thoroughly did he concur in the Bill; but he objected to the substantive Penal law and Criminal Procedure being embodied in a Bill required for the reconstitution of the Police Establishment.

Another matter proposed by the Honorable Mover was that the Executive functions of the Police should be separated from their judicial functions. That was a most important matter. For himself, speaking of the general principle only, he was disposed to adhere to the rule which should deprive Magistrates of the duties of Police Officers, but how far it was practicable was another question, and he must say that that was not the recommendation of the Commission, nor was it their intention that the connection of Magistrates with the Police should be discontinued. He was not speaking against the principle, but only against the supposition that by this Bill the object would be accomplished, and he could have no difficulty in satisfying the Council that the report did not go to this extent. The Commission drew up their recommendations in a series of propositions. The 25th proposition was as follows:—

"That in every District under the jurisdiction of one Magistrate, there should be at least one European Officer of Police, to be styled "District Superintendent of Police;" who should be departmentally subordinate to the Inspector General of Police, in every matter relating to interior economy and good management of the Force, and efficient performance of every Police duty; but bound also to obey the orders of the District Officer (that is, the Magistrate) in all matters relating to the prevention and detection of crime, the preservation of the peace, and other executive Police duties, and responsible to him likewise for the efficiency with which the Force performs its duty."

Here then it was clear that in the opinion of the Commissioners, Magistrates should have full cognizance and control of the proceedings of the Police.

Again it was said—

"In some parts of India this original function of the Magistrate has not been widely departed from, in other parts, extensive judicial powers have been superadded to their original and proper functions. This circumstance has imported difficulties in regard to maintaining the leading principle enunciated above; for it is impracticable to relieve the Magistrates of their judicial duties, and on the other hand it is at present inexpedient to deprive the Police and public of the valuable aid and supervision of the District Officer in the general management of Police matters.

That, therefore, it is necessary that the District Officer shall be recognized as the principal controlling Officer in the Police administration of his District. And that the Civil Constabulary, under its own Officers, shall be responsible to him and under his orders, for the executive Police administration."

Again it was said—

"That all Members of the Police Force should be bound to obey the lawful orders of the Magistrate, and that for neglect of duty or disobedience of orders the Magistrate should have the power of inflicting summary criminal penalties; such sentence to be appealable in the usual course of Law."

It appeared also that a Dispatch dated as lately as the 6th July last had been received from the Secretary of State on this subject in which it was enjoined that the Civil Police should be under the control of the Magistrates of Districts subject to the supervision of the Commissioner of the Division where such Officer existed. And what did the Police Commission say? They said—

"We trust that our propositions will show the care we have taken to preserve the responsibility of the Magistrate for the general success of the Criminal administration of the District; and to afford him prompt means of ensuring the obedience of the organized Constabulary to his lawful orders."

The Council, he thought, must now be satisfied as to the intentions of the Members of the Commission in preparing this Bill, who certainly did not propose to give effect to the

principle of practically separating the duties of the executive Police from those of Magistrates. The Commissioners admit the practical difficulties that presented themselves in dealing with the question, and the measure before them was not by any means of so thorough a character. The Bill indeed was silent on various important points of practice, and therefore did not carry out the principal object which it had been suggested to us was to be enforced. While we were considering the Criminal Procedure Code last year, one of the points discussed was the mode in which the Police should exercise their functions, that is, as to the power of examining prisoners, taking confessions, questioning witnesses, and so on. On that point this Bill was wholly silent, and that he thought was a material defect of the Bill. It was not only a defect, but something more, because the Bill allowed functions to be exercised without defining the mode in which they were to be exercised. In this respect he very much agreed with the recommendations of the Commission. In their 69th proposition it was stated as follows :—

"That the Police should not be used as an agency for the record of any evidence, confession, inquest, or the like ; but a system of keeping faithful, accurate, and minute diaries should be maintained. These diaries should specify concisely, but in detail, all duties in which any Police Officer may have been engaged, and every occurrence and information that may have required the attention of the Police within their respective ranges. All Police Officers engaged in specific detective duties should keep an accurate and minute diary of every step taken, and every information obtained in following up the clue of evidence. Such diaries should be Police documents only, and be sent to the District Superintendent, but should be open to the inspection of the District Officer."

Now he need hardly tell the Council that not dissimilar propositions were contained in the Criminal Procedure Code as it now stood. It prohibited the taking of evidence in detail. It prohibited the record of confessions, and it declared expressly the use which should be made of the information obtained by the Police.

Substantially there was no difference between the rules of the Code of Procedure and the views of the Commissioners, but the enquiries of the Police would not be regulated by this Bill but by such arbitrary bye-laws as might be from time to time framed. He had already referred to the power to be exercised by Magistrates. He would read what the 67th proposition stated. It was as follows :—

"That the Police should send to the Magistrate all such reports as he may require regarding Crime and Criminal Administration. But the Magistrate ought not to require more reports, &c., than are absolutely necessary."

If the Magistrate was to be allowed to call for any report he pleased, he (Mr. Sconce) thought that such a power was inconsistent with the declaration that the principle of the Bill was that the Magistrate should not interfere with the Executive Police functions. He thought that there was a great deal to be said on both sides. He would repeat that he rather inclined to the separation of executive from judicial functions, and he might adopt the clear and exact description of executive duties recorded on the 30th April 1857 by the Honorable and learned Vice-President as a Member of the Government. It was not therefore that he objected by any means to the separation of the two functions, but at the same time he felt, as the Commissioners seemed to feel, that much difficulty would be experienced in bringing the change into practical and consistent operation. Many Officers entertained great doubts as to so entire a change, and the better plan, he thought, was to adopt some middle course as suggested by the Commissioners. He might refer to the authority of the late Lieutenant Governor of Bengal. In his well-known Police Minute, Sir Frederick Halliday expressed a totally different opinion from the asserted principle of this Bill. In the 49th paragraph of his

Minute, Sir Frederick Halliday observed as follows :—

"There is, however, an opinion which has found favor with some persons of just weight and authority in matters of this kind, and which has indeed a certain plausibility which tends to recommend it to many, and especially to those whose experience or whose mode of thinking has been derived from European rather than from Oriental habits, against which I am especially desirous of raising my testimony in this place, the rather, perhaps, that in the days of my smaller experience, I myself have held and advocated the opinion, which I now very heartily condemn. The opinion to which I allude is this, that Magistrates of every degree should be debarred from all judicial powers, and should have nothing but the executive duty of preventing and detecting offences, and that separate judicial functionaries should always receive and try cases of every kind committed to them by the Magistrates of various degrees. Thus it is, I believe, contemplated by some advocates of this system, that, at or near every place at which a Deputy Magistrate is stationed, there should be a Moonsiff, or a Sudder Ameen, or a Judicial Officer of some corresponding class, to try all cases sent to him by the Deputy Magistrate; and that, in the same way, all cases coming before the Zillah Magistrate, whatever their nature and importance, should be sent for trial to a judicial Officer at the Zillah Station, Native or European."

He would not detain the Council by reading at greater length the views recorded on this point by the late Lieutenant Governor of Bengal, but he thought it important to refer to the opinion expressed by a person of so great authority and experience as Sir Frederick Halliday, as some ground for hesitating to prematurely adopt the principle which by this Bill we had been asked to sanction.

Upon the whole, therefore, he would not oppose the second reading of the Bill. He accepted the second reading but under great doubts as to the course to be followed. He felt that every thing which trenched on the Penal Code, and the Code of Criminal Procedure should be omitted. He heartily approved of it so far as it proposed to re-organize and reform the constitution of the Police, and to treat the whole Police as one body, not as now as the Police of each District and each Thannah separate from the Police of another. At the same time he wished it to be understood that he did not accept the second reading of the Bill in the full sense of making an entire separation between the executive and judicial functions of the Police. Even the Commission did not ask us to do that.

THE VICE-PRESIDENT said, he agreed in the remarks which had fallen from the Honorable Member for Bengal with reference to this Bill, so far as they related to the Penal Code and the Code of Criminal Procedure. It appeared to him (the Vice-President) that, when we should have these Codes in operation, there would be no necessity of having similar provisions in another Act. But that should not prevent us from passing the second reading of this Bill. At the time that the Madras Police Bill was brought into and passed by the Council, the Code of Criminal Procedure was not in such a forward state as to be passed. To enable the Madras Government, therefore, to establish a Police on the principle provided by this Bill, the Council were induced to allow the introduction into the Madras Police Bill of provisions similar to those contained in the Code of Criminal Procedure. Whereas, had the Code of Procedure been passed, he for one should have objected to the passing of the Madras Bill with the Sections in question. He thought it very impolitic to have two Acts declaring the law on the same point. If this Bill should pass the second reading and be referred to a Select Committe, as the Code of Procedure would probably be passed before this Bill was reported on by the Committee, it would be easy for the Committee to omit all the Clauses relating to Procedure.

As to the principle of separating the judicial and executive functions of the Police, he (the Vice-President) could not agree with the Honorable Member for Bengal. He (the Vice-President) had always been of opinion that a full and complete separation ought to be made between the two functions.

For these reasons he should support the Motion for the second reading of this Bill.

SIR BARTLE FRERE said, he was very much indebted to the Honorable Members who had spoken for the spirit in which they had received this Bill. He would only briefly reply to the observations of the Honorable Member for Bengal and of the Honorable Member for the North-Western Provinces. First, with reference to what had fallen from the Honorable Member for the North-Western Provinces, he (Sir Bartle Frere) would remark that he should also have been glad if longer time could have been afforded for the consideration of the Bill before the Motion for its second reading. His reason for proposing this Bill for a second reading before the vacation was two-fold—*first*, as had been observed by the Honorable Member for Bengal, the Bill was an old friend with a new face. In its main principles it was identical with the Madras Act, which had been passed last year, and which had been found to work so well. And *secondly*, the matter was one of exceeding pressing moment, as he trusted he should be able to satisfy the Council. He would beg the Honorable Member for the North-Western Provinces to recollect that the Bill in its character was strictly permissive, and that no Government was obliged to adopt it until it was satisfied that the time had arrived for its adoption. He need not remind the Council of the necessity for this, when it was considered that, unless we had our executive machinery in order for carrying out the plan, it would be vain to adopt it, and that the organization of such machinery was necessarily a work of time.

The Honorable Member for the North-Western Provinces also referred to the opinions of several old Officers who entertained doubts as to the principle of the Bill. They considered it suited well enough to England and Ireland and to the Presidency Towns, but not to the Mofussil. He (Sir Bartle Frere) would ask whether this objection was not met by an enumeration of the distant Provinces in which such a Police had been tried and had been successful. The principle had been put in practice in Oude, in parts of the Bombay Presidency, in Sind, and in a great part of the Madras Presidency. It had also been tried at the three Presidency Towns, which, he stated on Saturday last, had taken precedence of all others in point of time as far as related to Police reforms. He did not think that a better place could have been selected for the trial than Oude, with a view to test the adaptability of such a Police to the Mofussil, and the result was that the Oude Police had been entirely successful in all those points in which this Bill was concerned. He did not refer to the particular link at which the connection between the Police and the general Government was effected in Oude. But so far as the repression of crime and the giving the Executive Government a thorough hold over the criminal class of the population were concerned, the Oude Police had proved eminently successful. The principle had been applied in the greater part of the Madras Presidency where the population was more sparse, and where in parts the people were far more difficult to control than in Bengal. He thought therefore that it could hardly be said that such a Police as was provided for by the Act was unadapted to the Mofussil; however suited it might be for the Presidency Towns.

The Honorable Member for Bengal had said that the Bill was not altogether a Police Bill, but that it trenched upon the Penal and Criminal Procedure Codes. Concurring generally in what we had heard from the Honorable and learned Vice-President, he (Sir Bartle Frere) would be quite ready hereafter to adopt the course which the Honorable and learned Gentleman had suggested, although this could not have been done at the time this Bill was framed as neither of those Codes was then in existence. But the Honorable Member for Bengal seemed a little hard to please. When certain provisions in the Bill were borrowed from the Criminal Code, he complained

that the framers of the Bill had stolen his thunder; and where provisions were omitted in the Police Bill which were contained in the Code of Criminal Procedure, he still complained that we had not adopted the provisions of that Code. In either way he (Sir Bartle Frere) was ready to meet the views of his Honorable friend, either to omit from the Police Bill provisions contained in the Codes or to borrow from them such provisions as might be necessary to make this measure complete.

The Honorable Member for Bengal next complained, that all that had been done of late years to improve the Bengal Police had been ignored. He (Sir Bartle Frere) thought he stated last Saturday clearly and distinctly what had been done in the matter in Bengal. Nothing was farther from his wish than to ignore what had been done in Bengal in the way of raising salaries and multiplying officers of trust. But if he could have gone more fully into the matter, he should have shown that beyond this what had been done was not altogether in accordance with the principles of this Bill. What was done was simply to superadd to the existing rural Police, with all its vices and defects, certain semi-military bodies imperfectly disciplined and very inadequately under the control of the Government. They were a loose and cheap and not a very good copy of the old Native Army, and performed no real Police functions except those of a protective or repressive kind, for which the Native Army used to be employed. They were in fact copies of the Punjab Police Corps. In speaking of these Punjab Police Corps on Saturday last, he had strongly expressed his sense of what we owed to them for their services during the mutiny. He (Sir Bartle Frere) believed it was quite impossible to exaggerate the value of such services. But they were services rendered as a Native Army, not as a Police; and as a branch of Police there was no doubt that these Corps were very expensive and not efficient when their few Police functions were compared with their cost. Now it was a principle of this Bill that Military duties should remain in the hands of the Military Officers of Government, and that there should be no Military or Semi-Military body not directly responsible to the Commander-in-Chief of the Army, a principle on which alone it might be said that the Army could be expected to stand.

The Honorable Gentleman then adverted to the probability of the large expenditure which would require to be incurred in order to give effect to the proposed measure in the Provinces of Bengal. He (Sir Bartle Frere) thought that in this matter the Honorable Gentleman rather anticipated the function of the Executive Government. It might be said to be an impossibility to give a good Police to Bengal without additional expenditure. It was an expense however which the Government must face and provide for. Bengal had been worse provided for as regarded a Police than other parts of the country, and the Government of India felt that it owed a large debt to Bengal in this respect. Though the Honorable Member, reasoning from the analogy of Madras, expected that the additional cost in Bengal would be about 57 lakhs, he (Sir Bartle Frere) had no apprehension that the actual expense would be so large as that, since a dense and peaceful population like that of Bengal was necessarily less expensive in the matter of Police than a country more thinly inhabited and peopled by some very unruly races like Madras.

The Honorable Member for Bengal then argued at great length in support of his opinion that, while he approved of the proposed organization of the Police, he disapproved of the Bill so far as Procedure and the Penal clauses were concerned. On this point he (Sir Bartle Frere) had already said that he was ready to leave the matter to be considered in Committee. But his Honorable friend went on to say that, though the separation of the Judicial and Police functions was a principle of the Bill, and one of which he (Mr. Sconce) fully approved, it was not

the aim of the Commission, and he quoted their 24th and 28th propositions as at variance with the principle. In reply to this charge, he (Sir Bartle Frere) would remind his Honorable friend, that it was one thing to lay down a principle, and another to act upon it at once and entirely, when it was opposed to the existing system, to all existing forms of procedure, and to prejudices of long standing. Under such circumstances it was often necessary to come to a compromise. In England Police reforms were commenced in the time of Henry III, and the subject was very vigorously taken up in the time of Elizabeth, but little effectual was done until the time of Sir Robert Peel. It took a very long time to carry out the principle of a Police force separate from and independent of the Judicial Magistracy in the metropolis, and now, though more than thirty years had passed since the principle had been recognized by all the great authorities and by public opinion in England, it had not yet been fully extended throughout the United Kingdom. But every year some progress had been made, and he hoped that at no distant period the principle would be acted upon throughout India as completely as his Honorable friend could desire. The Honorable Member for Bengal had called this Bill a half and half measure. He (Sir Bartle Frere) could assure the Honorable Gentleman that nobody was more inclined that it should be made a whole measure than he (Sir Bartle Frere) was, and he should be very glad if his Honorable friend would only induce the Executive Governments to give it their support, so as to effect a still more complete severance of the Police and Judicial functions than this Bill contemplated. The Honorable gentleman, however, rather disappointed us at the conclusion of his speech by throwing out doubts as to his own entire concurrence in this principle of the Bill, by quoting the authority of the late Lieutenant Governor of Bengal as in favor of a different principle. He (Sir Bartle Frere) had every respect for that able administrator; but before he pinned his faith upon anything said on such a subject by any body in India, he should wish to know the precise circumstances under which that opinion was given and also the time when it was given. He would remind the Honorable Gentleman that in this matter opinion was progressive, and he would ask him to point out any man whose opinions on the subject had not undergone considerable changes during the past twenty years.

He hoped that he was wrong in drawing the conclusion from the Honorable Gentleman's remarks, that he recommended we should do nothing in this matter. He (Sir Bartle Frere) thought that this was a subject which imperatively called for immediate action. He might refer his Honorable friend to the authority of Sir Robert Peel and of all other English statesmen of modern days, and not the least among them to our late lamented colleague, Mr. Wilson; but lest he should say that these were merely English opinions, he would refer him to the authority of Sir George Clerk, who was better qualified than any man he knew by his long official experience both in English and in Indian public life, and by his intimate acquaintance with the manners and customs of the people, to speak on the subject. He would refer him to the authority of that great soldier and statesman, Sir Charles Napier, of Sir Charles Trevelyan, and, though last yet not least, of the present Lieutenant Governor of the Punjab. His Honorable friend (Mr. Harington) seemed surpised at his appealing to the Lieutenant-Governor of the Punjab, and he (Sir Bartle Frere) believed that Sir Robert Montgomery had expressed pretty freely his opinions on this matter, putting his Honorable friend the Member for the North-West on his guard against what he had expected would be the recommendations of the Police Commission. But the Report of the Commission was not then before him, and he (Sir Bartle Frere) had such confidence in the impartial judgment of that able administrator, and in the soundness of

the general principles of the measure, that he was quite willing to leave the decision of the matter to him. If after full consideration of all the documents on the subjects his opinion should be that the measure was inapplicable to the Punjab, he (Sir Bartle Frere) was assured that such inapplicability would be found to be due only to temporary and local circumstances.

But the greatest argument after all in favor of the measure was the financial argument. He would not repeat what had been lately said by the Secretary of State in Parliament, and by Mr. Wilson so often and so forcibly in that Council. Honorable Members were well aware that we had a large deficit to meet, which we could not do unless we made large reductions in our Civil expenditure; and the only portion of that expenditure which admitted of much immediate reduction was that on account of the Police It was only by giving each Presidency a Police as efficient but less costly than it now possessed, that we could bring down our expenditure to a reasonable extent. We must remember that in this matter the necessities of Government were imperative. We must cut our coat according to our cloth. If we could have but one body to do a duty which had heretofore been performed by two bodies, the saving o expense was obvious.

The Motion was then put and carried, and the Bill read a second time.

SMALL CAUSE COURTS (MOFUSSIL)

The Order of the Day being read for the third reading of the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter"—

MR. HARINGTON said, he must ask the Council to allow this Bill again to be re-committed, as he wished to move the introduction of a Section the object of which was to enable the Sudder Court to obtain returns of the business disposed of by the Courts to be established under the Bill, and to issue such rules for regulating the practice and proceedings of those Courts, not inconsistent with the provisions of the Bill, as might from time to time be found necessary. The Sudder Court possessed this power under the Code of Civil Procedure, in respect to all the Courts now subject to their control, and it seemed right to give the Court the same power in respect to these new Courts which would also be subject to the general control and orders of the Sudder Court.

Agreed to.

MR. HARINGTON then moved the addition of the following Section to the Bill:—

"The Sudder Court shall have power to make and issue general rules for regulating the practice and proceedings of the Courts established under this Act, and also to prescribe forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form, provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force."

The Motion was carried; and the Council having resumed its sitting, the Bill was reported.

MR. HARINGTON moved that the Bill be read a third time and passed

The Motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

PENAL CODE.

The Order of the Day being read for the third reading of "The Indian Penal Code"—

THE VICE-PRESIDENT said that, as this Code had been before a Committee of the whole Council at a time when some of the Honorable Members of the Council were absent and when there was not a quorum, and as some slight alterations, chiefly verbal amendments, had been made by the

Committee, he thought it right, in order to obviate all objections, to move that the Council again resolve itself into a Committee on the Bill, so as to enable any Honorable Member who was desirous to do so, to propose any amendment therein.

Agreed to.

Sections 1 to 58 were passed as they stood.

Section 59 provided in what cases transportation might be awarded instead of imprisonment.

MR. SCONCE proposed the insertion of the words "if a man" in the 8th line of the Section. He had no objection to male offenders being sentenced to transportation for seven years, instead of to imprisonment for the same term. But he thought it inexpedient to apply the same rule to women. He would put the case generally on the principle that the transportation of a woman to the Andamans or any other like place was tantamount to perpetual banishment. The indiscriminate intercourse between male and female convicts might lead to co-habitation, and it was unreasonable to expect that a woman exposed to such temptations would return to India as she left it. She might have left behind her children and husband, and mother, and thus she might be irremediably ruined as a member of a family. They had no assurance that, at the Andamans Settlement, women would be kept in close confinement, apart from the men: and in their case, transportation, instead of reforming, might corrupt them.

THE CHAIRMAN doubted the necessity of adopting the proposed amendment. It was to be assumed that proper regulations existed, with regard to prison discipline and the like, in the place to which transportation might be made, so as to prevent any improper intercourse between male and female convicts. In England no difference was made between male and female offenders, and he saw no reason why any difference should be made in this respect in this country.

The question being put, the Council divided—

Ayes 2.	*Noes 5.*
Mr. Erskine.	Mr. Harington.
Mr. Sconce.	Mr. Beadon.
	Sir Bartle Frere.
	The Commander-in-Chief.
	The Chairman.

So the Motion was negatived, and after a verbal amendment, on the Motion of Sir Barnes Peacock, the Section was passed.

Sections 60 to 283 were passed as they stood.

Section 284 was passed after an amendment.

The remainder of the Code was passed as it stood, and the Council having resumed its sitting, the Bill was reported.

ABSENCE OF THE GOVERNOR-GENERAL.

The following Message from the Governor-General in Council was read by the Vice-President :—

MESSAGE No. 241.

The Governor-General in Council forwards to the Legislative Council a Resolution passed on this date, relative to the absence of the Governor-General from the Council, and to the necessity for vesting the Governor-General with certain powers during such absence.

By order of the Governor-General in Council.

W. GREY.

Secy. to the Govt. of India.

Fort William,
The 6th October 1860.

The Resolution referred to was as follows :—

Extract from the Proceedings of the Government of India in the Home Department, under date the 6th October 1860.

Resolved.—That it is expedient that the Governor-General should visit the North-Western Provinces of the Presidency of Fort William in Bengal and other parts of India, unaccompanied by any Member of the Council.

That the Honorable Sir Bartle Frere be requested to take charge of, and bring into the Legislative Council, with a view to its being passed into law, a Bill to authorize the Governor-General alone, during his absence, to exercise all the powers which might be exercised by the Governor-General in Council in

every case in which the Governor-General may think it expedient to exercise those powers.

(True Extract)

W. GREY,

Secy. to the Govt. of India.

SIR BARTLE FRERE said, he had the honor to move that the Standing Orders be suspended, to enable him to present and proceed with a Bill for the purpose of giving effect to the Message and Resolution which had just been read. It was his Excellency's desire to visit the North-Western Provinces to enable him to meet some of the Native Chiefs of Central India whom he was unable to meet last year. His Excellency desired to have the Act passed for a not longer period than three months, and if it should be necessary for him to prolong his absence beyond that period, he would apply to this Council for the necessary powers

MR. BEADON seconded the Motion, which was put and carried.

SIR BARTLE FRERE moved the first reading of the Bill.

The Bill was read a first time.

SIR BARTLE FRERE moved the second reading of the Bill.

The Motion was carried and the Bill read a second time.

SIR BARTLE FRERE moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee without amendment, and the Council having resolved its sitting, was reported.

SIR BARTLE FRERE then moved that the Bill be read a third time and passed.

The Motion was carried and the Bill read a third time.

SIR BARTLE FRERE moved that Mr. Beadon be requested to take the Bill to the Governor-General for his assent.

Agreed to.

PENAL CODE.

THE VICE-PRESIDENT in moving the third reading of "The Indian Penal Code," said that it was not his intention to have made any remarks upon this Code on the Motion for the third reading, nor would he have done so, had it not been for a Petition which had been presented to the Council. That Petition which purported to be signed by 332 British and Christian inhabitants of Calcutta, was presented to the Council at a very late period; and as he thought that the Code might be passed before the Petition could be printed, he deemed it right to move not only that the Petition be printed, but that the Clerk of the Council be ordered to read it at the table. The Petition was accordingly read, and it had also, he believed, been printed and circulated, so that every Honorable Member was aware of its contents.

With reference to the objections to the Code itself, he need not remind Honorable Members that the law of England to which the petitioners referred, consisted of the written or Statute law, and of the unwritten or Common law as it was called. Most of the offences provided for by the Statutes were referred to by common law terms, such as murder, burglary, and the like, so that it was difficult for a person to know whether the offence with which a prisoner might be charged amounted to that particular crime or not. Great inconvenience had been felt in England from the defective state of the law, both as regarded the Statute law and the Common law. In the time of Sir Robert Peel, by a Statute passed in the 7th and 8th of Geo. IV., an improvement of the law was effected as regarded offences against property, and in the 9th Geo. IV. as regarded offences against the person. Still much remained to be done to improve the law of England; and although the law to be administered by the Supreme Courts in India had to a certain extent been consolidated by the 9th Geo. IV. c. 74, yet the law remained very indefinite. In 1834 a Commission was appointed in England

"to digest into one Statute all the Statutes and enactments touching crimes and the trial and punishment thereof, and also to digest

into one other Statute all the provisions of the common or unwritten law touching the same and to enquire and report how far it may be expedient to combine both those Statutes into one body of Criminal law, repealing all other Statutory provisions."

The Commissioners shortly afterwards submitted a report on the subject, and he (the Vice-President) would call attention to some of the points referred to in their report, so as to show what the state of the law in England was. They said--

"The process of digesting the unwritten Criminal law involves two distinct operations. The first of which is, the collecting and arranging the widely-dispersed materials which constitute the law itself, or which, perhaps, may with greater propriety be said to constitute the evidence of what is termed the unwritten law, from which your Majesty's Courts extract the rules of Criminal law; the second branch of the process is that of extracting from the collected and arranged materials such general rules of law as they appear to warrant."

They then went on to show the difficulties under which they labored. They said that the law was contained in numerous text books, and they went on to say :—

"Even the decisions which it is thus difficult to collect, do not always clearly indicate the result of the opinions of the Judges: this is frequently left to be inferred from the ambiguous fact of a pardon having been granted. Where a conviction of a prisoner at the Assizes is afterwards set aside by the Judges in Town, the record which remains unaltered indicates the reverse of what has been the actual result of the investigation. Sometimes the omission of particular facts in a report leads to mistakes as to the effect of decisions; and sometimes a variance in the statement of different reports renders their grounds ambiguous, both which consequences we may observe are illustrated by some striking instances pointed out by Sir M Foster in his discourses. In doubtful cases, and especially where there is a conflict of judicial opinion, the weight attributed to decisions is not subjected to any certain test, but is dependent on the number and the professional reputation of the Judges, and the estimation in which particular reporters are held."

They then went on to say —

"It is in this part of our labors we have chiefly found the want of any certain authorities on which we could implicitly rely. The difficulties thus experienced in stating general rules and principles are, for the most part, to be referred to the following causes."

He would not trouble the Council by going through all the grounds from which the Commissioners stated that their difficulties arose. The following were some of them :—

"The existence of contradictory principles in the common law;—as to which it is observed that the common law is composed in a great measure of rules growing out of ancient policy and manners, which rules have been from time to time modified and restricted by exceptions founded on different and often contrary principles; so that the old reasons of the law are neither wholly retained nor wholly abolished, and its general purposes adapted to different periods of society are often at variance with each other."

"The occurrence of isolated decisions which cannot be referred to any general rules or principles."

"The great fluctuations which the Criminal law has undergone during the lapse of many centuries, and the adoption at different periods of some subtle, refined, and useless distinctions. Much of the difficulties and uncertainty attending the reduction of the unwritten law to a written form has arisen from the practice which obtained during so many centuries of altering the common law in order to suit the existing state of things. This indirect mode of supplying the defects of our early jurisprudence has rendered some branches of the common law extremely technical and complicated. And as innovations upon the ancient law of crimes by the means of a constructive enlargement of its definitions have usually been made in order to reach some case of peculiar aggravation, they have seldom been acted upon with consistency, and their extent has not been accurately defined."

They proceeded to observe :—

"In the notes to our Digest we have referred to numerous definitions of the offence of theft or larceny which not only contain various technical terms, the meaning of which is *no where accurately settled*, but differ in important respects from each other. For instance none of these definitions supplies any plain test by which the crime of theft may be distinguished from a bare trespass. Most of them indeed state that in order to constitute theft the taking must be *felonious*, but the term felonious which is made use of to *define* the offence of theft imports in fact only that the taking must be of such a nature as will constitute the offence of theft, or strictly speaking such as will subject the taker to certain penalties and forfeitures; and the term felonious is no where so defined as to explain in

an adequate manner what mode of taking shall be deemed essential to constitute a theft."

They then pointed out discrepancies in various parts of our law. They said—

"With regard to the *discrepancies* between the definitions of offences, it will be seen by reference to the Digest of the law of theft, that some of the definitions agreeably to the Civil law make the *lucri causa* or the intention of the thief to derive a profit from his crime, an essential part of the offence of theft, whilst others omit this, regarding an intention to deprive the owner of his property to be sufficient evidence of the crime. In some cases where the Courts have been anxious to reconcile the terms of ancient definitions with the more modern authorities, they have considered those terms to be satisfied by annexing a very vague and indefinite meaning to the term *lucrum*. A striking instance of this will be found in the case of the King *versus* Morfit reported in Russel and Ryan's cases on Criminal law 307, where it was held to be larceny in a servant clandestinely to take his master's corn to give to his master's horses, and in which some of the Judges stated it to be the ground of their opinion that the additional quantity of corn would diminish the work of the men who had to look after the horses; so that the *lucri causa*, namely, to give themselves ease, was an ingredient in the case."

In this Code it was provided that—

"Whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft;"

and the word "dishonestly" was thus defined:—

"Whoever does any thing with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly."

Thus it appeared that, under this Code, injury to the owner was the ingredient in the case, so that if the intention of the person was either to cause wrongful gain to one person or wrongful loss to another, it mattered not whether the intention of the thief was or was not to derive a profit from his crime.

The Commissioners concluded by observing as follows:—

"Lastly with respect to the expediency of combining the proposed Digest of the Statute law with that of the common law into one body of Criminal law, we feel confident that such a measure would tend greatly to the improvement of the jurisprudence of the country. In support of our views upon this subject we may observe that the definitions of crimes, the nature of punishments, and the forms of Criminal Procedure originated for the most part in common law principles, but most of the unwritten rules touching crimes have been modified by Acts of the Legislature which assume the terms and definitions of the common law. And thus it happens that the language in which these Acts are expressed, and the subjects to which they refer, are commonly unintelligible without a knowledge of the common law. The actual law in regard to any particular offence lies partly in the Statutes and partly in the Reports and text Books. A reference to a single instance may be sufficient to illustrate our meaning. A modern Statute makes it essential to the statutory offence that it does not amount to an offence at common law, and thus the common law description of the offence must be referred to for the purpose of ascertaining the limits of the Statutory offence. As one Digest therefore would be imperfect without the other, this seems to be a sufficient reason for uniting them."

It appeared therefore that this consolidation of the law was considered desirable in England, although it had never yet been accomplished. Fresh Commissions had from time to time been appointed, but nothing had yet been done. A Bill had been brought into the House of Commons during the last Session, for the purpose of consolidating the law, and Lord Palmerston proposed to the House to accept the measure on the credit of the framers. One of the Members, Mr. Edwin James, he thought, having objected, Lord Palmerston said that, rather than enter upon a discussion of its provisions, he would withdraw the Bill that Session. Thus it would be seen that nothing had yet been done on the subject in England, although the matter was acknowledged to be highly necessary and beneficial. Then how, he might ask, did we stand in this country? The law in the Mofussil was the Mahomedan law as it had been modified by English Regulations and Acts, and a Mahomedan Law Officer was appointed to

each Court for the purpose of assisting the Judge. He thought it very inexpedient that such a state of things should continue. If it was considered necessary or beneficial in England that the law should be codified, how much more necessary was it in this country that codification should take place? The remarks which applied to the administration of the English Law in England, were also applicable to the administration of the same law by the Supreme Courts in India. It was difficult to say what was common law. It had been suggested that a thing was contrary to common law when it was contrary to policy. But he thought that Judges ought not to be the judges of policy, and that it should not be left to them to say that this was or that was not contrary to policy. It appeared to him therefore that, if in England it was considered advisable to have the Criminal law consolidated, there could be no reasonable objection to such a consolidation here. Why the codification in England had not yet been completed might easily be explained. Honorable Members well knew the difficulty which we had had to pass the Code through a Council consisting of a few Members. We could therefore form some idea of the difficulty which had been experienced in England in passing such a Code through the House of Commons, composed as it was of so many Members holding a variety of conflicting opinions on the subject. The difficulty had certainly not arisen from a want either of Reports or of Digests.

He desired to draw the attention of the Council to another matter, on which a great deal of misunderstanding seemed to exist. There were very few cases punishable under this Code, which were not punishable under the Common or Statute law of England. Some of the offences might differ in names, but still the general principles of both were essentially the same. He did not mean to say that there were not some offences punishable very severely under the English law, which met with far milder treatment in this Code. Take the case of murder for instance. The English law defined murder to be the killing of a man with malice prepense. Now what was meant by malice prepense? The English law inferred it from certain acts, though in fact it might not exist. If a man was engaged in an unlawful act, and in doing it killed another, it was presumed that he meant to commit murder. Suppose, by way of illustration, that a man shot at a hen for the purpose of killing and stealing it, and killed a boy, not knowing that the latter was hiding behind the bush; according to the English law, because he was guilty of an unlawful act in shooting at the hen, he would, by the construction of law, be held to have had a malicious intent against the boy, and he was liable to be hanged. But this Code did not allow any presumption of malice, but got rid of all such difficulties by providing that culpable homicide was not murder unless the act by which death was caused was done with the intention of causing death, or with the intention of causing such bodily injury as the offender knew to be likely to cause death, or as was sufficient in the ordinary course of nature to cause death, or with the knowledge that the act was so imminently dangerous that it must in all probability cause death, or such bodily injury as was likely to cause death. For instance, if a man gave a slight blow to another who had a diseased spleen, and who died in consequence of that blow; if he knew that that man was laboring under such a disease, and that the blow was likely to cause his death, he ought to be punished for murder. But if he was ignorant of the man having a diseased spleen, and gave him a box on the ear, and death ensued, it would not be right or proper to hang him, and this Code therefore made provision accordingly. It was true that a man had no right to jeopardize another's life, but still he ought not to be punished for murder in respect of an act which, he (the Vice-President) would not say, might be tantamount to an innocent act, though it was something like it.

The Vice-President

He would not detain the Council unnecessarily, but he desired to call their attention to the form in which this Code was prepared. The Code began by declaring where it was to take effect. The second was a Chapter of General Explanations. It did not provide explanations for all cases indiscriminately, but only for those cases where difficulty might arise, when it would be necessary to refer to this Chapter to see what the meaning of the Code was. It was therefore simply an interpretation Clause of the Act.

From what was stated in the Petition, the petitioners seemed to consider that the English law was a special or local law Now he apprehended that it was not a special or local law within the meaning of this Code. A special law was defined in the Code to be a law applicable to a particular subject. For instance, the Post Office Act was a special law. There were in that law certain provisions which would be superseded by this Code when it came into operation, such as counterfeiting and forging Post Office stamps and the like, which more properly fell under the general law. But there still remained some offences peculiarly applicable to the Post Office, such as the non-delivery of a letter and the like, which required to be summarily punished before a Magistrate, and would be better provided for in a special law. Then again a local law was defined in the Code to be a law applicable only to a particular part of British India, such as, for instance, the Conservancy laws of Calcutta, Madras, and Bombay. It was probably not necessary or expedient that every one of the offences therein described should be declared an offence throughout the Mofussil. It might be desirable to extend some of them to the whole of India. Yet such of them as were not applicable should not be included in a general Code and declared to be offences in the Mofussil. These therefore were the special and local laws within the meaning of the Code, and he saw no reason why the petitioners should object to that part of the Code which provided that nothing contained in it should repeal, alter, or vary any special or local law. He did not mean to say that the Code consolidated the whole of the Common law of England, but many of its general principles had been adopted by the Code.

The next was a Chapter of punishments. The punishments were death, transportation, penal servitude, imprisonment of two descriptions, namely, simple and rigorous (that is, with hard labor), forfeiture of property, and fine. There was a question as to whether flogging should be included as one of the punishments; but for the present flogging had been omitted from this Code, and the question had been referred to a Select Committee for consideration. He did not think that there was anything in the punishments which could be objected to as being opposed to the Common or Statute law of England.

Another objection which had been urged against the Code was, that soldiers were excepted from it, at least soldiers beyond 120 miles from the Presidency. It must be remembered however that by the law under which we acted, the Charter Act, we were expressly prohibited from making any law inconsistent with the Articles of War for the punishment of mutiny and desertion. There was, however, a certain class of offences which were not strictly Military offences, for which soldiers might be tried and punished by the Supreme Court if within 120 miles from the Presidency, but if beyond that limit, by Courts Martial. It was stated that they would then be subject to the English law. Even if this should be so, we could not alter that provision, but must allow the anomaly to exist. To remove all doubt upon the subject, we had provided as follows by Section 5 of the Code:—

"Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4 W. IV. c 85, or of any Act of Parliament passed after that Statute, in any wise affecting the East India Company or the said Territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers

and soldiers, whether in the service of Her Majesty or of the East India Company, or of any Act for the Government of the Indian Navy, or of any special or local law."

The trial of soldiers 120 miles beyond the Presidency depended upon the 20 and 21 Vic. c. 66, s. 55, and there was a similar provision in the Articles of War for the Queen's Troops when in India. The Section ran thus:—

"Any officer or soldier who shall be serving in the Territories of any Foreign State or in any Country under the protection of Her Majesty or the said Company or at any place (other than Prince of Wales Island, Singapore, and Malacca), in the Territories under the Government of the said Company, and situated above 120 miles from the Presidencies of Fort William, Fort St. George, and Bombay, respectively, and who shall be accused of having committed treason or of any other crime which if committed in England would be felony, or of having committed any offence against the person or property of any subject of Her Majesty or any other person entitled to the protection of Her Majesty or of the Government of the East India Company or of any State in alliance with the said Company, may be tried by a General Court Martial to be appointed by the General or other Officer Commanding-in-Chief in such place for the time being, and if found guilty shall suffer death or be liable to be kept in penal servitude, or to transportation for life or for a term of years, or other punishment according to the nature and degree of the offence as by the sentence of any such General Court Martial shall be awarded, provided always that no sentence of a General Court Martial for any such offence shall be carried into execution until the same shall have been confirmed by the General or other Officer Commanding-in-Chief as aforesaid, and such Officer may, if he shall think fit, suspend, mitigate, or remit the sentence, or in the case of a sentence of death commute the same to a sentence of penal servitude or transportation for life, or for any certain term of years not less than fourteen, or to imprisonment with or without hard labor for such period of time as to him shall seem fit, provided also that any person who may have been so tried as aforesaid shall not be tried for the same offence by any other Court whatsoever."

And then by the Articles of War passed under the Act, it was provided that no punishment should be of

"such a nature as shall be contrary to the usages of English law in regard to the punishment of offenders."

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The next Chapter of the Code contained General Exceptions, and was framed to prevent the necessity of repeating in every Penal Clause a considerable number of limitations. Probably many of the erroneous impressions which had been formed of this Code had arisen from an imperfect acquaintance with or an insufficient study of its provisions. Now one of the Exceptions provided as follows:—

"Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it."

A mistake of law ought not of course to be excepted. It was not the case in England, and it would be dangerous to allow the plea of justification that the offender did not know the law. Then the Code went on to provide for offences committed by a child. The provision in the Code was the same as in England where the law declared that nothing was an offence which was done by a child under seven years of age. The Code then proceeded to provide for offences done by a child above seven years of age and under twelve, who had not attained sufficient maturity of understanding to judge of the nature and consequences of the act. But these were cases that would not, he (the Vice-President) thought, often occur. If a case of the kind should arise, the Judge could refer to the Chapter of exceptions which was framed in clear intelligible terms, instead of referring to English law which was contained in hundreds of law-books. The Code also adopted the same rule as in the English law with regard to insanity, by providing:—

"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

If a question as to insanity should arise, the Judge would have to see what the law provided about insane

persons, and this he could more easily ascertain by referring to this Code than to the numberless English decisions. Then there was an exception with regard to drunken persons. All this could not of course be provided for in the definitions of offences, but it had been done by the exceptions. There was another important matter connected with this Chapter to which he would very briefly allude, and that was the right of self-defence. It might be considered that this matter should not be laid down in this Code. He thought however that it should not be left unsettled and undefined, but that it should be clearly laid down in the general law of the land. He thought it very desirable that it should be laid down by law how far a man was justified in defending himself or his property, and this had been done by a short Chapter in this Code, pretty nearly in accordance with the principles of English law.

The next Chapter treated of abetment. Under the English law there were principals in the first degree, and principals in the second degree; accessories before the fact, and accessories after the fact. A man who with his own hands committed the act was a principal in the first degree, and those who were present aiding and abetting were principals in the second degree. The distinction between principals in the first degree and principals in the second degree was unknown to the most ancient writers on the English law, but the rule was adopted by the Judges in consequence of the mischief which resulted from treating what were now termed principals in the second degree as accessories after the fact, in consequence of which they could not be convicted before the principals had been brought to trial. By this Code no distinction was made between principals in the first degree and principals in the second degree. If a man were present, aiding and abetting in the commission of a murder, he would be tried for committing the offence; if he caused the murder to be committed, but were absent at the time, he would be liable to be tried and punished for abetment When two persons were present and committed a murder, it might be very difficult to prove which of them with his own hands committed the act. If both were present aiding and abetting each other, it was quite immaterial, he (the Vice-President) thought, as to who struck the blow, and they were both liable to be punished. But if a man was absent and caused the murder to be committed, he was only chargeable as an abettor. In England, the law of abetment did not apply in treason, or in misdemeanors. In cases of treason, the law was so stringent that a man was charged as a principal, if he instigated the crime. He (the Vice-President) saw no reason why the law of abetment should apply only in cases of felonies and not in all cases. It was very necessary that a prisoner should know what he was charged with. If charged with an offence committed in his absence he would be charged with abetment so that he might come prepared to meet it. The rules laid down in the Code on this subject followed very much those contained in the English law. For instance, when one act was abetted and a different act was done, the abettor ought not to be liable to be charged with the offence committed unless it was a probable consequence of the abetment. This was laid down by Section III, which provided as follows:—

"When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment."

That was the same as the English law; but instead of being obliged to refer to the English law, every Judge in the Mofussil would have this Code before him, and would find the rule and the following Illustration given in the Code:—

"A instigates a child to put poison into the food of Z and gives him poison for that purpose. The child, in consequence of the insti-

gation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y."

The following was another text given in the Code :—

"When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect."

If we turned to our law-books, we would find the same rule laid down almost in the same words. He would not trouble the Council by going minutely into the matter. What he wished to show was that the Code was very much in accordance with the principles of English law. We had endeavored to do our best. We should be very glad if any one would point out where it was wrong. Even now, if any one were to do so, he (the Vice-President) for one would feel very thankful to him and would give his suggestions his best consideration. In America their Codes were not perfect, but were subject to revision every three years. He did not know of any errors in the Code as it now stood. But we were not infallible, and if there should be any mistakes, the Judges always had the power of giving a nominal punishment and there was also the power of pardon vested in the Government.

Then there was a Chapter of offences against the Army or Navy. They were very few in number. Section 131 provided as follows :—

"Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Section 189, however, provided as follows :—

"No person subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this Chapter."

This Chapter was not intended for soldiers or sailors who were subject to the Articles of war. But if a non-military man went and induced a soldier to commit an offence, that man ought to be punished, and he (the Vice-President) did not see that there was anything in this Chapter to object to. Nor did he see what there was to complain of in the next Chapter of offences against the Public Tranquillity. According to the English law, three persons were sufficient to constitute a riotous assembly, whereas by this Code there must be at least five. The petitioners had not complained of any specific Clause or definition in the Code. If they had done so the Council would no doubt have given their earnest attention to the remarks or suggestions of the petitioners in order to correct any thing that might be found to be unjust or erroneous. The petitioners stated only that the Common law of England was familiar to them. They probably made this statement, because they had not fathomed the depths of the law with which they professed to be familiar. There were some who boasted of what was called the flexibility of the Common law. For his own part, he objected to that flexibility and preferred a written law by which the Judges were to be bound. He did not complain of the Common law. It had come down from age to age, but like every thing else it was susceptible of improvement and progress. If the matchlock of one age was to be superseded by the rifle of a subsequent age, he saw no reason why there should not be progress in law. Chapters IX and X related to offences by or against public servants, and to contempts of

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the lawful authority of public servants. He would not trouble the Council with any remarks on these Chapters, particularly as they had already been fully considered in Committee, and there was, he thought, nothing in them to object to.

Then there was Chapter XI relating to false evidence and offences against public justice. He trusted it would operate as a check upon the benamee system so prevalent in this country. Nothing was more common than that, as soon as a decree had been obtained, false claims were got up for the purpose of protecting the property of the losing party. Under this Code, therefore, it was made a punishable offence. He (the Vice-President) saw no difference between a man who made a fraudulent conveyance to defeat a particular creditor, and one who did so to defeat his creditors generally, an offence punishable by the law of England.

There were only four cases in the whole Code in which a man might be sentenced to death, and even then it was left discretionary with the Judge, instead of passing a capital punishment, to sentence him to transportation. He should be glad himself if capital punishment could be abolished altogether, though probably the time had not yet arrived for such a measure.

Then there was a Chapter of offences relating to Coin and Government Stamps, and a Chapter of offences relating to Weights and Measures, to which he presumed there could be no objection. There was also a Chapter of offences affecting the Public Health, safety, convenience, decency, and morals, which would include cases of nuisance. Then there was a Chapter of offences against the human body, including hurt and grievous hurt. There was a definition of grievous hurt. In England the words "grievous bodily harm" were used, but not defined. In England there was sometimes very great difficulty in deciding, whether an act amounted to theft. There would be no such difficulty under this Code by which a dishonest misappropriation of property was made an offence, the term "doing a thing dishonestly" being defined to be the doing of that thing with the intention of causing wrongful gain to one person or wrongful loss to another. In England, however, the law required that there must be an intention to despoil the owner. Of the two, he had no doubt that the definition laid down in the Code was the correct text. The Code further contained an explanation which provided that—

> "A dishonest misappropriation for a time only is a misappropriation within the meaning of this Section."

He thought there could be no objection to such a provision. It appeared to him that a servant who misappropriated his master's property with the intention of restoring it after a time, ought to be punished He had no more right to steal his master's property for a time than for ever. It was no answer for a trustee who misappropriated his trust property to say that he intended to put it back again The fact was that, when once a man made away with property in that way, it generally happened that he never had the means of making restitution. So with regard to the thief, the probability was that, when he stole another's property, he would never change his mind about restoring the same to the owner.

Under the Chapter of offences relating to Religion, he desired to say a few words. There was a Clause in this Chapter concerning which it had been said that we had gone beyond the proper bounds of legislation. The Clause was as follows :—

> "Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

It was said that this Clause would prevent a Missionary from performing his duty. He (the Vice-President) thought however, that the intention necessary to constitute the offence had

not been sufficiently adverted to by those who objected to the Section There was no objection to a person's going to another to argue with him about his religion and with the honest intention of convincing him that the views and opinions which he entertained were erroneous. It was a mistake to suppose that the intention of the Missionary was to wound the feelings of the person whom he intended to convert. He had thought it right to draw attention to this Section, because it appeared to him that there was a great misunderstanding as to the real effect of it.

Then there was a Chapter of offences relating to Documents and to trade or property marks, and a Chapter relating to Criminal breach of contracts of service. The latter provided for the case of a man contracting to carry another on a journey and leaving him in the middle of a jungle, as well as for the case of a nurse attending upon a sick child and leaving it suddenly. It would be insufficient to leave such cases to the Civil Courts. The Chapter also provided for breaches of contract of labor. For instance, a man who by voluntary engagement was taken from one part of India to another at the expense of another man, ought to be punished if he broke his engagement. It was no more than the case of the Coolies who went to the West Indies and other Colonies.

With reference to the Chapter of offences against Marriage, there was one offence punishable under this Code which was not punishable under the English law. He meant the Section concerning adultery. On this subject the Bombay Government had sent up a large mass of papers expressing a desire that the punishment should be more severe, and that women should be punished for adultery in order to put a stop to the frequency of the crime among the Natives. He must confess, however, that in his opinion what had been done by the Code was all that the Legislature ought to do. The Law Commissioners did not make adultery an offence in the Code as originally framed by them. With the contract between the husband and wife, the law did not profess to deal, but left both free in respect to the offence of adultery. With reference to this subject, the authors of the Code observed as follows:—

"We considered whether it would be advisable to provide a punishment for adultery, and in order to enable ourselves to come to a right conclusion on this subject, we collected facts and opinions from all the three Presidencies. The opinions differ widely. But as to the facts there is a remarkable agreement.

The following positions we consider as fully established: first, that the existing laws for the punishment of adultery are altogether inefficacious for the purpose of preventing injured husbands of the higher classes from taking the law into their own hands; secondly, that scarcely any native of the higher classes ever has recourse to the Courts of law in a case of adultery for redress against either his wife, or her gallant; thirdly, that the husbands who have recourse in cases of adultery to the Courts of law are generally poor men whose wives have run away, that these husbands seldom have any delicate feelings about the intrigue, but think themselves injured by the elopement, that they consider their wives as useful members of their small households, that they generally complain not of the wound given to their affections, not of the stain on their honor, but of the loss of a menial, whom they cannot easily replace, and that generally their principal object is that the woman may be sent back. The fiction by which seduction is made the subject of an action in the English Courts is, it seems, the real gist of most proceedings for adultery in the Mofussil. The essence of the injury is considered by the sufferer as lying in the '*perquod servitium amisit.*' Where the complainant does not ask to have his wife again, he generally demands to be reimbursed for the expenses of his marriage."

They then went on to say—

"Nobody proposes that adultery should be punished with a severity at all proportioned to the misery which it produces in cases where there is strong affection and a quick sensibility to family honor. We apprehend that among the higher classes in this country, nothing short of death would be considered as an expiation for such a wrong. In such a state of society we think it far better that the law should inflict no punishment than that it should inflict a punishment which would be regarded as absurdly and immorally lenient.

There is yet another consideration which we cannot wholly leave out of sight."

—and this was a matter to which he desired to call the particular atten-

tion of the Council with reference to the remarks of certain Members of the Bombay Government on this subject—

"Though we well know that the dearest interests of the human race are closely connected with the chastity of women and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state of society in this country which may well lead a humane man to pause before he determines to punish the infidelity of wives. The condition of the women of this country is unhappily very different from that of the women of England and France. They are married while still children They are often neglected for other wives while still young. They share the attentions of a husband with several rivals. To make laws for punishing the inconstancy of the wife while the law admits the privilege of the husband to fill his zenana with women, is a course which we are most reluctant to adopt. We are not so visionary as to think of attacking by law an evil so deeply rooted in the manners of the people of this country as polygamy."

The Code, as it now stood, although it did not punish the offence as regarded the husband or the wife, provided for the punishment of the stranger or the third party, the man who, knowing or having reason to believe a woman to be the wife of another, has sexual intercourse with her. He (the Vice-President) thought that no gentleman signing the Petition, could, as a Christian, object to such a provision. The law provided protection to a man in respect to his property, but that was a small matter as compared with the protection which a man required in respect of what was far nearer and dearer to him, namely, his family honor. A man who entered another's house and robbed him of his property would be punished, and he saw no reason why a man who seduced another's wife and thereby rendered him miserable for life ought not to be punished also. He would ask Honorable Members to look at the wretchedness to which the husband might be subjected. His house, instead of being a home to him, might become a desolation. His children, instead of being a source of comfort and happiness, would probably only be a misery to him by reminding him of one who had once been dear to him. To this part of the Code at least, he (the Vice-President) thought there could be no objection.

With these remarks he begged to conclude his address to the Council, thanking Honorable Members for the attention and perseverance they had shown, and the great assistance they had afforded to him in amending and preparing the Code which he was happy to say, was at length completed, and which he hoped and believed would tend to the public good and to an improved administration of public justice in this country.

MR. BEADON said that, after the very able and clear explanation of the scope and nature of the Code, which they had just heard from the Honorable and learned Vice-President, it was quite superfluous for him to add anything, and he begged to apologize to the Council for taking up their time at this late hour of the day. But he was reluctant to give his vote for the third reading of this Bill without stating very briefly and generally the reasons for his assent.

He had given his most careful and respectful attention to the Petition which had been presented to the Council, praying that the Code might not be made applicable to the Presidency Towns or to British Christians; and though he highly commended the spirit in which the Petition was conceived, and thought the petitioners perfectly right in endeavouring to protect themselves against what they believed to be an invasion of their privileges and a dangerous innovation in the Law, yet he confessed that he could not find a single reason urged in the Petition which would justify the Council in hesitating to pass the Bill or in at all restricting its operation.

It would have been of great assistance if some of the Gentlemen who had signed that Petition, and who were highly competent to give an opinion on the various points which had come under discussion, had favored the Council with their suggestions on any part of the Bill at an earlier stage of its progress. But they had not done so. It could not be said that the proceed-

ings of the Council had not been sufficiently open, or that the public had been taken by surprise, for, independent of the fact that the Code had been before the world for the last 25 years, it was well known that the subject had more recently engaged the attention both of Parliament and of the Government and the Legislature in India, that the Bill was published more than a year in the Gazette, that it had since been revised by a Select Committee, and that for the last two months the Council both at ordinary and extraordinary sittings had been engaged in going through it, Clause by Clause, in Committee. During that time Members of the Press had been invariably present and had published reports of the proceedings in the newspapers. He did not think therefore that any body could complain of any want of notice or publicity. The only suggestion which the Committee had received from without was on the subject of flogging, and in deference to that suggestion the punishment of flogging had been taken out of the Code, and the question had been again referred to a Select Committee. But it was now too late to bring forward objections to the principle of the Bill. The time had gone by for that, and he did not think that the Council was called upon to stay legislation because at the eleventh hour the petitioners had been led, erroneously as he believed, to believe that their interests would suffer from it, and that they would be aggrieved by its operation. He felt quite convinced that, if those Gentlemen had studied the Code more carefully, and had made themselves masters of its provisions, they would have been convinced that its tendency, so far from being to over-ride or set aside the Criminal Law of England, was in strict accordance with the principles of that law, and that its object was to confirm those principles, to extend them in supersession of the remnants of Mahomedan law by which some of our Mofussil Courts were still guided, and to collect and consolidate in one comprehensive and systematic Code, which should be not only a guide to our Judges but the basis of all future legislation, the laws which were now only to be found scattered over many volumes and in the recorded decisions of the Courts. Wherever there had been a departure from existing English law, as for instance in making adultery a criminal offence, the framers of the Code had not followed any theoretical views of their own, but had adopted the conclusions of the most eminent jurists and thinkers of almost every civilized age and country, and had acted in accordance with the general opinion of Englishmen at the present day. It was because he believed and knew that this Code was substantially the Criminal law of England modified to suit local circumstances and to provide for the punishment of various crimes which might be said to be indigenous to this country, that he gave it his hearty support.

He had for nearly a quarter of a century been connected with the public service, and though he could not say that he was in India when the Code first saw the light, he remembered the discussions to which it gave rise almost immediately afterwards, and had had the advantage of hearing it criticised by the eminent Members of the Calcutta Bar of that day, and defended by the illustrious statesman who was the chief framer of the Code, and by whose name it would probably be known to posterity. But those criticisms were directed rather against the peculiar and unusual phraseology of the Code and against the exact and philosophical terms with which crimes, familiar to our ears by other names, were described, than against any change in the substantial law which the Code involved. He could remember the strenuous opposition made to the law whereby European British subjects were in matters of Civil Justice made amenable to the Mofussil Courts. He also bore in mind the opposition more successfully made to the law which had been proposed for rendering them amenable to the same Courts in Criminal matters. But he did not remember that any such opposition had been offered to the

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Penal Code, or that any serious objection was ever brought against it except that it would not be understood by those who would have to administer it in the Mofussil. At any rate it certainly was never supposed that the learned Judges who administered the Law in the Presidency Towns would be puzzled by the Code, or that in their hands it would be used as an instrument to deprive British Christians of their privileges. He might add that, from 1836 up to the present time, there was nothing which had been made the subject of such constant reproach against the Government of India as its tardiness in passing into law the Penal Code which had been prepared and made ready to its hand by Lord Macaulay's Commission.

He could not conclude without expressing his deep sense of the obligation which the Government and the country owed to the Honorable and learned Vice-President, through whose able and untiring exertions the Code had at last been brought into a state in which it could safely be adopted as the universal Law of India. Nobody who had attended the deliberations of the Council could have failed to be struck with the assiduity and devotion with which the Honorable and learned Gentleman had applied himself to this arduous task, and the acute discrimination he had brought to bear upon every part of it. Every one in short must admit, and especially the Members of this Council, that without his assistance it would have been impossible to pass this Bill. The full benefits which India would derive from the labors of the Honorable and learned Gentleman had yet to be developed; but he (Mr. Beadon) was greatly mistaken if, when the Code became law and was administered under the guiding direction of the Honorable and learned Gentleman sitting as the Chief Judge of an united Court, and superintending the administration of justice throughout the Presidency of Bengal, this great monument of his legislative ability were not highly and universally appreciated, and if he were not regarded as one of the greatest benefactors that India ever possessed.

SIR BARTLE FRERE said that after what had fallen from His Honorable Colleague, he would not detain the Council beyond a few minutes. He would not say a word about the Code itself after the very able exposition of the Honorable and learned Vice-President. Nor would he allude to the Petition except with an expression of regret at its having been the only exception to the unanimity with which he had hoped all classes would have congratulated the Honorable and learned Vice-President on the completion of a work on which so much learning and ability had been expended, which had been so carefully prepared, and to which after devoting years of labor to its completion his Honorable and learned friend had been permitted to put the finishing stroke. It would be presumptuous in him (Sir Bartle Frere) to attempt any eulogy of such a work, and he would therefore make no further allusion to the merits of the Code or the ability displayed in its preparation. These had been acknowledged by the most learned lawyers both in this Country and in England. But he felt that they owed a debt of gratitude to the Honorable and learned Vice-President for his unwearying patience and forbearance, his perseverance, and his truly English determination and love of perfect and thorough work. He also thought that to the Officers of the Council, both to those who now and to those who formerly held office, the emphatic thanks of the Government and of this Council were due.

The Motion was then put and carried, and the Code read a third time.

SIR BARNES PEACOCK moved that Sir Bartle Frere be requested to take the Code to the Governor General for his assent.

Agreed to.

EMIGRATION TO THE FRENCH COLONIES.

MR. BEADON moved, that the Council resolve itself into a Committee on the Bill "to authorize and regulate the emigration of Native laborers to the French Colonies;" and that the Committee be instructed to consider

the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I (the repealing Clause) was passed after the inclusion of Section III, Act XXIV of 1852, commonly called the Crimping Act.

Sections II to IV were passed as they stood.

Section V was passed after an amendment.

Sections VI to VIII were passed as they stood.

Sections IX and X were passed after verbal amendments.

Section XI was passed as it stood.

Sections XII and XIII were passed after verbal amendments.

Sections XIV to XVIII were passed as they stood.

Section XIX was passed after a verbal amendment.

Sections XX to XXVII were passed as they stood.

Section XXVIII was passed after verbal amendments.

Sections XXIX and XXX were passed as they stood.

After Section XXXI was passed with verbal amendments—

MR. BEADON said, he wished, with reference to the proviso which had been added to this Clause by the Select Committee, to explain that it was the intention of the Government of India, when forwarding the Act to the Secretary of State, to point out to Her Majesty's Government the necessity felt by the Council for empowering the Governor-General in Council, in case of necessity, to suspend the emigration of Native laborers to the French Colonies in the same manner as he could now by law suspend the emigration of Native laborers to our own Colonies. If, in consequence of the introduction of that proviso, the French Government should object to sign the Convention, it would be open to Her Majesty's Government, if they should think fit, to explain to the French Government that the law was only permissive, and to prohibit the Governor-General in Council from exercising the power reserved to him by the Act. In that case, however, this Council would have done its duty, and the responsibility would rest with Her Majesty's Government.

The Preamble and Title were passed as they stood, and the Council having resumed its sitting, the Bill was reported.

MR. BEADON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. BEADON moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

UNIVERSITIES BILL.

The Order of the Day being read for a Committee of the whole Council on the Bill "for giving to the Universities of Calcutta, Madras, and Bombay the power of conferring Degrees in addition to those mentioned in Acts II, XXII, and XXVII of 1857"—

SIR BARTLE FRERE said, he had received a very urgent application from the Vice-Chancellor of the University of Calcutta, requesting him to use his best endeavors to get this Bill passed before the next examination. He had a few amendments to propose in the Bill, which he hoped would not occupy the time of the Council at this late hour, beyond a few minutes. He should move that the Council resolve itself into a Committee of the Bill, and that the Committee be requested to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I provided as follows:—

"It shall be competent to the Chancellor, Vice-Chancellor, and Fellows of the Universities of Calcutta, Madras, or Bombay respectively to confer such Degrees as the said Chancellor, Vice-Chancellor, and Fellows of any such University shall appoint by any Bye-laws or Regulations made and passed by them in the manner provided in the said Acts and submitted to, and approved by the Governor in Council or Lieutenant-Governor of the Presidency in which such University is situated."

SIR BARTLE FRERE proposed the insertion of the words "and to

grant such Diplomas or Licenses in respect of Degrees" after the word "Degrees."

MR. BEADON said, he also had an amendment to propose in this Section, which, he thought, would override the amendment of his Honorable friend opposite (Sir Bartle Frere). He (Mr. Beadon) thought it contrary to the course of previous legislation and to right principle, to empower the Universities to confer degrees which had not received the express sanction of an Act of this Council. He would not then enter into the question whether any of the particular degrees now proposed to be created were such as ought to be granted by the Universities or not, th ugh the Council was aware th t there was some difference of opinion on this point. All he desired was to giv the Universities the power of conferring these particular degrees which they represented to be necessary in add tion to those already sanctioned by law, and not to give them unlimited power with the sanction of the local Governments to confer any other degrees which they might think proper to create, and which might differ at each University. He should therefore move the omission of this Section, and the substitution of the following:—

"In addition to the degrees which the Chancellor, Vice-Chancellor, and Fellows of any of the said Universities have power to confer, it shall be competent to the Chancellor, Vice-Chancellor, and Fellows of the said Universities to confer the several degrees of Licentiate of Laws, Doctor of Laws, and Licentiate of Civil Engineering."

SIR BARTLE FRERE said, he was afraid that the amendment of his Honorable friend opposite (Mr. Beadon) would not meet the case, because, while it embodied the principle objected to by those who di-approved of the Bill, it did not effect what the promoters of the Bill desired. He believed that his Honorable friend had already d scussed the matter in the Senate of the Calcutta University. This Bill had however been brought in at the pressing instance of the Senate. He (Sir Bartle Frere) was but a most unworthy Member of the Senate himself, and had taken no part in this discussion, but he could not help thinking that, when the Senate had discussed such a matter and had formally decided it, and asked the Government to take the necessary steps to give eff ct to their decision, that it would be presumptuous for us to set ourselves against the Senate and to pretend to be better judges than they were of what the University required. This Bill was accordingly brought in to meet the wishes of the Vice-Chancellor and the Senate. They had asked him to endeavour to have the Bill passed before the Recess. Farther than this, he had no wish or interest in the matter. If it was the sense of the Council, he would gladly withdraw the Bill; otherwise he must beg his Honorable friend's pardon for opposing his amendment.

MR. BEADON said that all that he had to say further was that the amendment suggested by him proposed to confer upon the Senate of the several Universities the three degrees asked for by the Calcutta University in addition to those which the law already prescribed. He believed that in England the Universities had not the power of themselves to create new degrees, and that either an Act of Parliament or a Royal Charter was required for the purpose.

The question being put, the Council divided:—

Ayes 2.	*Noes* 5.
Mr. Beadon.	Mr. Erskine.
The Chairman.	Mr. Sconce.
	Mr. Forbes.
	Mr. Harington.
	Sir Bartle Frere.
	The Commander-in-Chief.

So the Motion was negatived, and Sir Bartle Frere's amendment was put and carried.

SIR BARTLE FRERE proposed other amendments which were severally carried and which made the Section run as follows:—

"It shall be competent to the Chancellor, Vice-Chancellor, and Fellows of the Universities of Calcutta, Madras, or Bombay respectively to confer such Degrees and to grant such Diplomas or Licenses in respect of

Degrees as the said Chancellor, Vice-Chancellor, and Fellows of any such University shall have appointed or shall appoint by any Bye-laws or Regulations made and passed or to be made or passed by them in the manner provided in the said Acts, and submitted to and approved by the Governor-General in Council as far as regards the University of Calcutta, or by the Governor in Council of Madras or Bombay as regards the Universities of Madras and Bombay respectively."

The remainder of the Bill was passed as it stood; and the Council having resumed its sitting, the Bill was reported.

SIR BARTLE FRERE moved for a suspension of the Standing Orders, to enable him to move the third reading of the Bill.

MR. BEADON seconded the Motion. which was put and carried.

SIR BARTLE FRERE then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

SIR BARTLE FRERE moved that Mr. Beadon be requested to take the Bill to the Governor General for his assent.

Agreed to.

POLICE.

SIR BARTLE FRERE moved that the Bill "for the regulation of Police within any parts of the British Territories in India to which it may please the Governor-General in Council to extend its provisi ns" be referred to a Select Committee, consisting of Mr. Harington, Mr. Sconce, Mr. Erskine, and the M ver.

Agreed to

PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. HARINGTON moved that the Bill "for the levy of Port-dues at Calingapatam and Mun oorcottah within the Presidency of Fort St. George" be referred to a Select Committee, consisting of Mr. Sconce, Mr. Erskine, and Mr. Forbes.

Agreed to.

LICENSING OF ARTS, TRADES, &c.

MR. HARINGTON (in the absence of Mr. Forbes) moved that a communication received from the Madras Government, relative to the Bill "for imposing a Duty on Arts, Trades, and Dealings, and to require Dealers in Tobacco to take out a License," be laid upon the table and printed.

Agreed to.

The Council adjourned at 5 o'clock on the Motion of Sir Bartle Frere, till Saturday, the 24th November 1860.

Saturday November 24, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,
Hon'ble C. Beadon,
H. B. Harington, Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.,
C. J. Erskine, Esq.,
and
Hon'ble Sir C. R. M. Jackson.

MESSAGES.

The Vice-President read Messages, informing the Legislative Council that the Governor-General had assented to the following Bills:—

The Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

The Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter."

The Bill "for providing for the exercise of certain powers by the Governor-General during his absence from his Council."

"The Indian Penal Code."

The Bill "to authorize and regulate the Emigration of Native Laborers to the French Colonies."

The Bill "for giving to the Universities of Calcutta, Madras, and Bombay the power of conferring degrees, in addition to those mentioned in Acts II, XXII, and XXVII of 1857.

INCOME TAX.

THE CLERK presented to the Council a Petition from the Inhabi-

tants of Prince of Wales' Island and Province Wellesley against the extension of the Income Tax to the Straits Settlements.

SIR BARTLE FRERE said, he observed that the Petition was dated in August last, since which time the Straits Settlements had been exempted from the Income Tax. There was therefore no necessity to print the Petition, and he should only move that it lie on the table.

Agreed to.

CIVIL PROCEDURE.

THE CLERK also presented a Petition from Ramachendrappi, an inhabitant of Ankola, in Zillah Honore, of the Madras Presidency, concerning Section 364 of Act VIII of 1859, (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter).

MR. HARINGTON moved that the Petition be printed.

Agreed to.

FOREIGNERS.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding an extract of a letter from the Advocate General relative to the expediency of a continuance of Act XXXIII of 1857 (to make further provision relating to foreigners) which would expire in December 1861.

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

THE CLERK reported that he had received from the Military Department an amended Draft of a Bill to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army.

SIR BARTLE FRERE said, he should defer to move the printing of this paper, as there were some further papers on the same subject which he expected would be presented to the Council next week, when he should move that they be all printed together.

PENAL CODE AND CRIMINAL PROCEDURE.

THE CLERK reported that he had received a communication from the Home Department forwarding an extract of a Despatch from the Secretary of State for India, regarding the Penal Code and the Code of Criminal Procedure.

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

RECOVERY OF RENTS.

THE CLERK reported that he had received from the Home Department the Returns called for in Message No. 160 dated 25th June 1860, regarding claims relating to the recovery of rent preferred in the Revenue Courts of the North-Western Provinces.

MR. HARINGTON moved that the communication be printed.

Agreed to.

PUNISHMENT OF OFFENCES IN FOREIGN STATES.

THE CLERK reported that he had received from the Home Department a communication relative to a proposed extension of the provisions of Act I of 1849 (to provide more effectually for the punishment of offences committed in Foreign States) to crimes committed by native subjects of the British Indian Government in any places beyond the limits of the British Territories.

THE VICE-PRESIDENT moved that the communication be printed.

Agreed to.

PENAL CODE.

THE CLERK reported that he had received from the Home Department a communication from Mr. John Cochrane regarding some of the provisions of the Penal Code, particularly those relating to homicide and the right of private defence.

THE VICE-PRESIDENT moved that the communication be printed.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENTS).

THE CLERK reported that he had received from the Governor of the Straits Settlements two communications relative to the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca.)

MR. FORBES moved that the communications be printed.

Agreed to.

MR. FORBES postponed the Motion (which stood in the Orders of the day) for a Committee of the whole Council on the same Bill. In doing so, he explained that some papers had just been received from the Governor of the Straits Settlements and ordered to be printed, which it would be necessary to consider before the Council went into Committee on the Bill.

WRECKED BOATS.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill 'for the preservation of property recovered from wrecked boats."

Agreed to.

PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George."

Agreed to.

GOVERNMENT MEASURES.

SIR BARTLE FRERE said, there were three Bills before the Council, which had been brought in by Government, namely, the Paper Currency, the Licensing, and the Police Bills. These were not at present in a state to be brought before the Council as they had been ordered to be published for three months before they could be further proceeded with. There was also a Bill to amend the Articles of War for the Native Army, which it was intended to bring forward as speedily as possible, and to pass with no further delay than might be required by the Members of this Council. It had already been considered by the Governments of Madras and Bombay, and by the Commanders-in-Chief of all three Armies, whose remarks and suggestions would be laid before the Council. The Clerk of the Council had read to-day a communcation from the Secretary of State on the subject of the Code of Criminal Procedure, which was now one of the most important measures in a stage to be proceeded with. It was the desire of the Government to give every facility to the passing of that Code as speedily as circumstances would admit, and he might add on behalf of the Members of the Government, and also, he was sure, of every Member of this Council, that we hoped that the proceeding with this Code would not entail on the Honorable and learned Vice-President so severe an amount of labor as he underwent in passing the Penal Code through its latter stages, for we all felt that the immediate passing of the Code would be dearly purchased if it deprived us, even for a while, of the assistance of the Honorable and learned Gentleman.

MR. HARINGTON said, with reference to that part of the remarks of the Honorable the President of the Council which related to the proposed Code of Criminal Procedure, he begged to observe that the Code had already passed through a Committee of the whole Council, and that the time for which it had been ordered to be republished had expired. What now chiefly remained to be done was to make such alterations in the Code as had been rendered necessary by the amendments introduced into the Penal

Code since the Code of Criminal Procedure was settled in Committee, so as to fit the one to the other. He thought that it would save time, and that it would be found a convenient mode of proceeding, if the necessary alterations were considered in the first instance by a Select Committee, and reported upon by them rather than by a Committee of the whole Council. He begged therefore to move that the Code of Criminal Procedure as it now stood be referred back for the object just mentioned to a Select Committee, consisting of Mr. Forbes, Mr. Sconce, Mr. Erskine, and himself, and that the Committee be instructed to submit their Report as speedily as they conveniently could.

THE VICE-PRESIDENT said, he thought it very desirable that the course suggested by the Honorable Member for the North-Western Provinces should be followed, inasmuch as the Penal Code having been passed, some alterations were required to be made in the Code of Criminal Procedure, which it would be a mere matter of detail to go through, and which would probably occupy a great deal of the time of the Council if they were not first made in a Select Committee. It appeared to him, therefore that the proposed course would rather expedite than delay the passing of the Code.

The Motion was then put and carried.

The Council adjourned.

Saturday, December 1, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble Cecil Beadon,	A. Sconce, Esq., and
H. B. Harington, Esq.,	C. J. Erskine, Esq.

ARTICLES OF WAR (NATIVE ARMY).

THE CLERK reported to the Council that he had received a communication from the Military Department forwarding copies of papers on the subject of the proposed amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army.

SIR BARTLE FRERE moved that the above communication be printed.

Agreed to.

CRIMINAL PROCEDURE.

THE CLERK also reported that he had received a communication from the Home Department, forwarding extracts from two Despatches from the Secretary of State for India for consideration in connection with the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

SIR BARTLE FRERE moved that the above communication be referred to the Select Committee on the Bill.

Agreed to.

MARRIAGES (NATIVE CHRISTIANS).

MR. SCONCE presented to the Council a correspondence from the Bengal Government regarding the solemnization of Marriages between Native Christians by persons who were not appointed Marriage Registrars, and moved that it be printed.

Agreed to.

EMIGRANT VESSELS.

SIR BARTLE FRERE presented the Report of the Select Committee on the Bill "relating to vessels carrying Emigrant passengers to the British Colonies."

VACATIONS (CIVIL COURTS).

MR. SCONCE presented the Report of the Select Committee on the Bill "to amend the law relating to vacations in the Civil Courts within the Presidency of Fort William in Bengal."

MINORS.

MR. SCONCE, in moving the first reading of a Bill "to amend the law relating to Minors," said that the Bill which he now had the honor to present to the Council was not intended to affect any law now existing. From time to time doubts had frequently arisen in the Mofussil Courts as to the proper tribunal for the adjudication of disputes relative to the custody of minor children in the lifetime of their parents. Sometimes the disputes were with respect to fathers against their sons, and sometimes with respect to sons against their fathers. The cases having been brought before the Magistrates, the Magistrates found that the matter was beyond their jurisdiction, and that they were consequently unable to give the parties any redress. The purpose therefore of the present Bill was, instead of requiring parties who were in that position to have recourse to a regular suit, to permit them to be heard on a summary application by a Zillah Judge. The subject had been more immediately entertained at the instance of certain Missionaries residing in the Province of Cuttack, in the case of their converts; but obviously the Bill was not intended to relieve one party more than the other. The simple object was that there should be some tribunal in which immediate redress might be given Now except in cases of violence, the Magistrates had no jurisdiction; and as ordinarily these disputes were unattended with violence, no redress could be obtained except by a regular suit. A regular action in a Civil Court naturally pre-supposed a plaint, and a plaint implied a valuation, so that before a father could file a suit, he was obliged to put a value on the head of his child, and so on. Under this Bill complainants would proceed by Petition. Questions might occasionally arise as to the age at which a minor might be left to take care of himself, whether for example a boy should under any circumstances be discharged from the control of his father at fourteen or fifteen years: and again as to the age at which an infant might with propriety be removed from the charge of its mother; but practically no difficulties had arisen in adjudicating upon such points, and the Bill would therefore not declare or amend the substantive law now in force. It had occurred to him, whether it might not be expedient to adopt Mr. Serjeant Talfourd's Act relating to the custody of infants; but upon the whole it seemed to him for the present to be sufficient to provide effective tribunals for the speedy decision of complaints. The matter also was one of sufficient importance to have elicited from the Secretary of State an expression of his opinion that immediate legislation on the subject was necessary. With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

PORT-DUES (AMHERST).

MR. SCONCE moved the first reading of a Bill "for the levy of Port-dues in the Port of Amherst." He said that this Bill was similar in every respect to the various Bills which had from time to time been passed for the levy of Port-dues, except as to the rate. In other Bills the rate prescribed was not less than four annas per ton; with respect to Amherst, however, the Commissioner of the Tenasserim and Martaban Provinces considered that one anna would be sufficient, and he (Mr. Sconce), therefore proposed a rate not exceeding two annas.

The Bill was read a first time.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

The Order of the day being read for a Committee of the whole Council on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)—"

MR. ERSKINE said that, if the Honorable Member who had charge

of this Bill had no objection, he begged to suggest that its consideration be deferred for a few days. For the last day or two he had been going carefully over the Bill in order to put into definite form the few amendments which he proposed to introduce. In doing this, it certainly appeared to him that in one or two of the Sections of the Bill, especially in Sections IV and X, there were difficulties, which, unless they were susceptible of explanation by means of information which he had not yet been able to obtain would require that considerable modifications should be made in those Sections. In like manner, with respect to one of the new proposals which he had been urged to recommend. It was only yesterday that the Honorable Member for Bengal had pointed out to him that much discussion had taken place on that subject some four or five years ago. It was desirable that the discussions which then took place should be duly considered before any fresh proposal on the same subject was made; and if therefore the Honorable Member for Madras had no objection, he would suggest that the consideration of the Bill be postponed till the next meeting of the Council.

MR. FORBES said, this Bill had now been before the Council upwards of 18 months, and the Honorable and learned Judge, late a Member of this Council anticipated that great benefits to the Police Administration of this city would follow from the passing of the Bill. Several representations had also been received from Madras and elsewhere urging the enactment of the Bill without any further delay, and he (Mr. Forbes) hoped therefore that, in consenting to accede to the wish of the Honorable Member for Bombay, the Honorable Gentleman would be prepared next Saturday to proceed with any amendments he might have to propose. On this understanding he begged to move that the consideration of the Bill be deferred till Saturday next.

Agreed to.

The Council adjourned.

Saturday, December 8, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President* in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble C. Beadon,	A. Sconce, Esq.,
H. B. Harington, Esq.,	and C. J. Erskine, Esq.,

FINANCES OF INDIA.

THE CLERK presented to the Council a Petition signed by 8837 inhabitants and Tax-payers of Calcutta relating to the Finances of India.

MR. SCONCE said, it was his intention to move that that Petition be printed. But before making that Motion, he would, with the permission of the Council, put one or two questions to the Honorable the President of the Council on matters somewhat connected with the subject of the Petition. The first question he would put, generally related to the income and expenditure of the present year—whether the Government saw or anticipated any difficulty or material delay in submitting for the consideration of this Council, Statements in detail of the income and more especially of the expenditure in all its branches, whether incurred in India or in England. Much had already been said and done regarding the largest item of the understood increase; he meant the Military expenditure. But there were one or two items of the total expenditure, regarding which some information seemed desirable. One of these related to the Civil, Political, Judicial, and Police charges as incurred in India. As he understood, the increase for the present year over and above the normal year 1856-57 was about two millions. He did not mean to say that, if the Statements for which he asked were to be submitted, they would afford matter for this Council to act upon But he would say that it would be convenient for the Council to know, with reference to the Act lately passed by them, the exact nature of the expenditure with which the income was burdened.

Another matter was as to the English charge. From the Resolution lately published by the Government of India it appeared that the estimated charge for the current year in England on account of India was £6,983,000. A large portion of that was a charge to which no one could take exception; he meant the charge for guaranteed interest which amounted to a million and a half. Deducting therefore that interest, the other charges amounted to £5,477,000, that is, close upon five and a half millions sterling. In 1856-57 the total charge, excluding guaranteed interest, was £2,574,000, and thus there appeared to be an increase of £2,939,000, that is, close upon three millions. Not only was that the increase over the charge of 1856-57, but he understood there was an increase of one million over the charge of last year. He thought therefore that he had some ground to desire to be enlightened on the subject.

The other question related to the Railway Accounts. There were several Railway Companies, some in Bengal, and others in Bombay and Madras. Hitherto the deposits made by the several Companies had been referred to as if they should be dealt with as one common fund. It seemed to him desirable to know how much had already been paid on account of each Company, how much had been spent on account of each Company, and what was the balance in the Treasury on account of each Company. He thought that this information would be more especially desirable, because he believed there was ground to suppose that some of the Companies had lagged behind in this respect

The third and last matter to which he would venture to refer was what he could not but conceive had been greatly exaggerated, or with respect to which at all events considerable misapprehension prevailed. It related to the appropriation of public money in favor of the Mysore family. He did not know if the President in Council was in possession of any information on the subject; but certainly it seemed to him important that the circumstances connected with the grant should, if possible, be disclosed.

SIR BARTLE FRERE said, before answering the questions put to him by the Honorable Member for Bengal, he would beg to move that the Petition be read at the table.

The Motion was carried and the Petition read accordingly.

SIR BARTLE FRERE said, when the Honorable Member for Bengal informed him yesterday, that a Petition would be presented to-day, and that he intended to move it to be printed, and to put certain questions founded on it relative to the public accounts of receipts and disbursements, he (Sir Bartle Frere) thought it his duty, in stating that he had no objection whatever to offer to his doing so, to point out frankly the risk to the growth and permanent usefulness of this body, if we failed to keep in view the distinction between Legislative and Executive functions, and if we, in this Council, were to assume towards the Executive Government the position occupied by the House of Commons towards the Government in England. The Legislative Council had no reason to be dissatisfied with the progress it had made towards becoming a useful and influential portion of the machinery of Government, but he need not remind his Honorable friend that there were many, of various and opposite shades of opinion, who viewed this Council with no friendly feelings—who would gladly see it abolished, and omit no opportunity of recommending that it be swept away, and the business of legislation made over to a Dictator responsible only to the people of England, and to them only for the results of his measures. He need not tell his Honorable friend that he (Sir Bartle Frere) was no more an admirer of such a project than he was; and as one who honestly and sincerely desired, and had always desired to see the Legislative Council grow in responsibility, authority, and usefulness, he warned his Honorable friend against establishing a precedent which, however popular to-day, might at any time be condemned as foreign to the legitimate objects and in-

tention of the Legislative Council, and against affording a handle for saying that we neglected our own proper legislative functions in questioning the action of the Executive Government. Before proceeding farther, therefore, he would ask his Honorable friend what course he proposed to take with regard to the Petition, whether he intended to found on it any Motion, or to take any legislative action in the matter?

MR. SCONCE said, he had no hesitation whatever in saying that, in framing the questions which he had put, he had no intention of following them up at this moment with any legislative measure, or of putting the result of any information which might be communicated by the Government in any other shape before this Council. That probably was an imperfect answer to the enquiry of his Honorable friend. Just before his Honorable friend observed that it seemed to him, he (Mr. Sconce) was inclined to enter on a course which appeared calculated to attempt to control the Executive Government by this Council. Whatever he had said or done to-day was without reference to any novelty, and certainly either in expressing his intention of moving that the Petition be printed, or in putting the questions which he had put, he thought it was hardly fair to infer that he intended to take any course which in this Council had not hitherto been countenanced. Certainly from the note which he had received from his Honorable friend yesterday, he was aware of the light in which he looked upon the step he (Mr. Sconce) was about to take in bringing forward the subject. It was certainly not his intention to open up any question by which the legal powers of this Council might be brought into discussion, or in any sense to raise a question by which any conflict should arise between the Executive Government and this Council. He did not know how far he intended to go in the matter. He could only state his views generally. If the time should ever come, which he hoped had not arrived to-day, when it should appear to this Council desirable to move for any information which the Executive Government hesitated to give, and if he approved of the course which the Council took, he should be prepared to state his grounds. But for the questions which he had put to-day, there were ample precedents; and if it was necessary, he might go farther and state what he ought probably to have stated in the first instance, that he had no other object in the course he was now taking than of being enlightened on a question which interested not only every Member of this Council but the whole of India. The House of Commons had been referred to; but besides the third Estate of the Realm, there was, as they all knew, a fourth Estate: and to that he must add a fifth, and that Estate was Publicity. It would not do to tell him that publicity was not beneficial. It benefited the Government by which information was communicated just as much as it benefited those to whom it was communicated. In this sense, therefore, he asked the question. He had not raised nor did he see any occasion of raising the question of the power of the Council, far less of a conflict of powers. The time might come when a question might arise upon which his Honorable friend and himself might differ as to the mode in which that question should be discussed, but, as he had said before, such a question had not yet arisen.

SIR BARTLE FRERE resumed. The Petition just read set forth certain promises made by the Executive Government of India during the past year, pledging itself to give to the public full and clear details of public expenditure, full estimates in anticipation of the coming year, periodical statements of the cash balances of the Empire, and after alleging that these promises tended greatly to inspire confidence in the capitalists and commercial classes of the Empire, the Petitioners proceeded to state that, after anxiously waiting, they as yet found no signs of a fulfilment of those promises, and to intimate unmistakeably an opinion that this alleged failure to redeem the pledges they referred to, must be

productive of evil effects on the Money Market, and be prejudicial to the interests of the State.

A Petition like this, printed and circulated two days before the English Mail left, and presented on the day that the Mail closed, when few of the parties signing it could possibly attend to hear any explanation given, and when it would be difficult to attempt to send even the explanation we might have to offer by the same Mail, did not place the Government, whose administration was impugned, and which was charged with breach of faith, in an advantageous, he would not say in a fair position. It was well known that the present period was an *interregnum* between the loss of one statesman, who was charged by the Government of England with the care of the finances of India, and the arrival of his successor and that those in whose charge the financial administration rested for the time would be wanting in their duty if they anticipated the action of the coming man, and fettered his proceedings, by acting as they would if in permanent charge of the Indian Exchequer.

But, if ever the idea crossed his mind that this Petition was intended to throw blame on the Government, without allowing a fair opportunity to show that such blame was not deserved or to impair public confidence in the Government, such an impression would have been instantly corrected by the sight of the signatures appended to the Petition, when he saw the names of so many men of the highest repute in the great Mercantile Community of this city, men who, he felt certain, were incapable of any attempt wilfully to embarrass Government. He felt convinced that the petition must be the genuine expression of a real feeling of anxiety regarding the important public interests to which it related, that such feeling was entitled to respectful attention on the part of Government, that it ought to be met in the same spirit of plain speaking of which it was itself an example, and it should not be his fault if the answer was not as full and satisfactory as the means at his disposal and the short notice he had received would allow. He trusted he should at all events be able to show to the satisfaction of the highly respectable body from which the Petition proceeded, not only that there had been no breach of any pledge or promise made on behalf of the Executive Government of India, but that there was less cause for anxiety as to the financial condition of India, than the gentlemen who signed the Petition—honestly, he was sure, and sincerely, but he trusted without any good cause—seemed to feel.

Before entering on the specific statements of the Petition, it was necessary that he should briefly recal to the recollection of the Council the course which had heretofore prevailed for many years past, with regard to the preparation of the estimates and accounts of revenue and expenditure.

In March and April the Financial Department of the Government of India had been accustomed to prepare from returns sent in by the various Departments, what was called the "Anticipation Sketch Estimate" for the coming year—such an estimate as Mr. Wilson gave us the results of in proposing the Income Tax. This was sent home and had formed the basis of any statement which the Secretary of State for India might make in Parliament, relative to the prospects of revenue and expenditure in the year which had just begun, when he made his statement in the House of Commons between May and July.

This had usually been followed in October by what was called the "Sketch Estimate," drawn out in more detail and from more perfect data

And about the following January it had been customary to frame from data still more perfect what was called the "Regular Estimate," which afforded the closest approximation which was ever attempted to the true results, but which was never prepared till the year estimated for was nearly half over.

The actual returns of income and expenditure for the year preceding had been usually prepared about the same month, January, and were regarded as a principal check on the correctness

Sir Bartle Frere

of the regular estimate, for the year then current.

Such was the practice from a remote period up to the present year. It was not necessary now either to criticise or apologize for it, as it would shortly be a thing of the past.

If the Council would turn to the Financial Resolution of Government, dated 7th April last, Honorable Members would find, sketched out by a master's hand, the system of Budget, Estimate, and Audit, which was for the future to be followed.

With the permission of the Council he would read the following extract from the Resolution, which related more immediately to the subject :—

"Now the most important step towards securing financial economy will be the establishing of a system whereby a Budget of Imperial income and expenditure shall be prepared annually, so that the Financial Estimates for each year may be arranged, considered, and sanctioned by the Supreme Government of India before the year commences. The system prevails in England, and it will now be introduced and rigidly carried out in India. Before the commencement of each official year the Supreme Government will require careful estimates to be framed of the anticipated income and the proposed expenditure of the Empire for the coming year. And after considering the various objects to be accomplished in relation to the means and resources of such accomplishment, after comparing the past with the proposed expenditure, after weighing the recommendations of the several Executive Governments and the Heads of Departments, the Supreme Government will allot and appropriate to each branch of the service, and to the several detailed heads within each branch, specific sums. The several Executive Governments and the Departments will be charged with the due application of the sums assigned by the above Act of Appropriation. The specific amount assigned will, on no account, be exceeded. If unforeseen emergency shall necessitate extraordinary expenditure, the Executive Government, or the Local Authority will represent the case to the Supreme Government, without whose sanction no additional expenditure must take place, unless the urgency of the circumstances is such that application for prior sanction is not possible, in which case the earliest report must be made, with the view of obtaining the subsequent sanction of the Financial Authorities."

And farther on, among the advantages of the system, it was stated :—

"It lays the foundation of a real and true method of Imperial audit. A definite standard *will be* laid down by the Budget, a precise authority *will be* prescribed for every thing, a definite limit on every point *will have been* fixed. Then an Imperial Audit *will try* every branch of the public expenditure by that standard, *will* ascertain whether that authority for every item is produced, *will* observe whether that limit has been transgressed."

The Council would observe that throughout, the Resolution spoke of the future.

Again, it was observed and this was the portion of the Resolution to which he would especially beg the attention of the Council :—

"Now it is evident that such a system as that above described, *firstly*, of Budget and Annual Estimate; *secondly*, of Account; *thirdly*, of Audit, can only be matured and established *after the lapse of several months*. During the coming year, 1860-61, the requisite arrangements can all be made in detail, so that by the year 1861-62 the system will be brought into full play. But the Government are so convinced of the efficacy of the system in enforcing immediate economy, that its partial introduction during the year now about to commence has been resolved on. Such introduction, *will, doubtless, not be complete;* it will be superadded to and not be allowed to supersede the organization already existing: for existing methods and departments cannot be dispensed with, until a competent substitute shall have been provided. *Such substitute cannot be duly prepared until the coming year* 1860-61 *is well advanced.* In the mean time the partial and provisional introduction of the system at once will do decided good, so far as it goes—will afford practical experience to guide the Government in making permanent arrangements in future years."

It was found impossible to do more with the estimates for the current year than to draw them up with greater care than usual, and to impress on all Departments concerned that they would be held more than ordinarily responsible for the correctness of the estimates, and for strict adherence to them in prospect. Long before Mr. Wilson's death in August, he had become convinced that he could not expect such estimates as he had hoped for in May last, before May 1861.

The Budget and Audit Committee, which was appointed to report how the principles laid down in the Resolution of 7th April could be best carried out, was appointed in Financial Resolution of the 11th May. They re-

ported on the 30th July, and their Report would be found published with the orders of Government on it in Financial Resolution of 17th November. The bulky forms of estimate and account which form the Appendices to the report, could only within the last few days have reached the more remote stations in India. It was necessary to bear these dates in mind, in order to judge how far the Executive Government is open to the imputation conveyed in this Petition of having failed to redeem its pledges. For it was only with regard to such prospective estimates as had yet to be prepared under these last orders, that Mr. Wilson could have promised "full estimates in anticipation for the ensuing financial year."

For this current year, 1860-61, the estimates must necessarily be prepared on the old plan. The general results of the Anticipation Sketch Estimate were given by Mr. Wilson himself, and by the Secretary of State for India, in laying the usual Indian financial statement before Parliament.

It had been lately intimated in a Financial Resolution of the 19th November, that the results given by the Sketch Estimate prepared in October last were more favorable by about a million sterling than was expected from the Anticipation Estimate. It gave an excess of expenditure over income amounting to about 6¼ instead of about 7¼ millions sterling, and he was happy to state that the materials of the regular estimates, which were now coming in, and which might be expected to be complete in January next, gave good grounds for hope that the result would be considerably more favorable than even that of the October estimate, notwithstanding the serious loss of revenue likely to occur, owing to the existing scarcity and bad season in the North-Western Provinces and Madras.

As far as the Government of India were concerned, no objection whatever existed to produce this year both these estimates, the April and the October one, as they were produced last year, shortly before Mr. Wilson arrived in this country. But the publication of the Sketch Estimate on that occasion was considered to have caused inconvenience, and in February last a Despatch was received from the Secretary of State, dated 10th January, pointing out the inconvenience of publishing in this country results which might be liable to modification when revised at home, and directing that such publication should be deferred till an opportunity had been afforded for communication with the Home Government.

He confessed that, with the prospect of being able at as early a date as January next to produce the regular and more perfect estimates of the current year, drawn up according to the old fashion, and shortly afterwards to furnish Prospective Estimates prepared under the Budget Rules for the coming year, he could hardly suppose that the Money Market or the Mercantile Community of Calcutta could care to know more than the general result which was stated in the Financial Resolution of November 19th, as about one million more favorable than anticipated by the late Mr. Wilson and by the Secretary of State in Parliament. But if it was found, on referring to the Chamber of Commerce as the representatives of the Commercial Community, that the information was desired as of practical importance and influence on the Money Market, every detail they desired should be given, and he need not add that it would have been given as readily and more expeditiously had that body applied for it direct to Government in the first instance.

So, with regard to details of public expenditure in past years, the accounts were regularly sent home, and as regularly printed and presented to Parliament and made public, in as full detail as was, he believed, generally desired. In their complete form this could only be done at home, for there alone the details of home income and expenditure were known. He held here a Parliamentary Paper, dated only the 30th July last, containing a Comparative Statement of the revenues and charges of India, including the home charges, payments for guaranteed Railway interest and Railway

receipts for the years '56-57, '57-58, and '58-59, and as estimated for '59-60 and '60-61.

If, however, any public interest could be served by an earlier or fuller publication of the accounts relating to this country, every information desired by the Mercantile Community, as bearing on their own interests, should be made public with the least possible delay, and here again he would repeat that the object desired might be attained more easily and expeditiously if the Chamber of Commerce or any similar body representing the Commercial Community were to apply direct to the Executive Government, and specify the information they desired.

He trusted that, as regards any promise of "full estimates in anticipation for the ensuing financial year," he had cleared the Government of India of any charge of inattention to its pledges, since it would be some months before the first of such estimates could be prepared; and that, if in the meantime the capitalists and Commercial Community of Calcutta or any other part of India desired any information beyond what had been published, such as the less perfect estimates under the old system could afford, they would be assured that they had only to make a specific request in the proper quarter to ensure its receiving every reasonable attention.

That he did not state this without reason would, he thought, be evident from what he had to state as regarded the promise to publish periodical Statements of the Cash Balances of the Empire. He found that the last quarterly Statement was published on 9th March last; and that the accidental omission to publish the subsequent Quarterly Returns was not brought to the notice of Government till two days ago, when, on receipt of a letter from the Chamber of Commerce, pointing out the omission, it was immediately rectified, and the returns for the quarters ending April, July, and October were published in this morning's Gazette. Had the omission been noticed to Mr. Wilson in April or July, or to any Member of the Government subsequently, he need hardly state that he was sure it would at once have been supplied.

There was one circumstance connected with these returns of Cash Balances which he was glad to have an opportunity of explaining. It would be seen that from April to October there was a very considerable falling off, to the extent of upwards of four millions in the amount of these balances But it did not appear that this was more than was usually observable during the latter of those two quarters, when the expenditure went on at the usual rate, month by month, while comparatively less was collected in all branches of revenue. The actual balances in hand in October this year were rather higher than in October of the year preceding, though last year the 5½ per Cent. Loan was open, and the receipts into the open loan between July and October of that year were upwards of a million sterling.

He was assured, on very high authority, that an impression was very prevalent among some of the best informed capitalists, Native and European, that a loan in India, in the early part of the coming year, was inevitable, and that this belief had given rise to great anxiety, and had exercised a depressing effect on the Money Market. Now this might be considered a rather delicate subject to touch on, and it might be said that it would be more prudent to abstain from any public statement on any matter concerning the future. But having the means of removing what we believe to be groundless alarm, and holding that it could never be either prudent or right in a Government to act towards its creditors with a reserve which would be imprudent and wrong in an individual, he had no hesitation in stating his confident hope and belief, that the impression to which he had alluded was unfounded. Looking to the state of our cash balances now and in former years, to the amount of receipts from loans during the months from October 1859 to February last, to the present rate of our monthly expenditure, to the vigo-

rous efforts which were being made to reduce that expenditure, and to the general prospects of the season, he could see no reason whatever to apprehend that any loan in this country could possibly be necessary, if things remained in their present condition of peace and general prosperity. We hoped to end the year in April with a cash balance at least equal to what Mr. Wilson expected, namely, twelve millions sterling, which was nearly two millions more than we had in the same month of 1859, and more than was generally considered a perfectly safe amount to have in hand at that period of the year.

The Council was of course aware that the Secretary of State took power before Parliament rose to borrow three millions in England; but he stated at the time, that he hoped to use this power only to such an extent as might be necessary to meet probable short payments on account of Railway Companies in England, and he (Sir Bartle Frere) had every reason to believe that the Secretary of State still entertained the same hope. This brought him to the suggestion of the Honorable Member for Bengal, that accounts of the receipts from each Railway Company, the sums drawn out, and the balance in hand should be published monthly for general information. All these details were published annually in the accounts presented to Parliament, and he would briefly state why a more frequent publication would be neither just nor necessary. When a Company had expended all its paid up guaranteed Capital before the work was complete, three courses were open to Government, *first*, to force the Company to borrow the money required at any sacrifice, on the security of the completed portion of the line; *second*, to advance from the Government Treasury the money required to carry on and complete the works; and, *third*, to take the works out of the hands of the Railway Company and finish them by Government agency: which of these courses should be adopted was a matter of judgment. But it often happened that the *second* course was the least open to objection, especially when, as had lately been ordered, Government charged interest for every Rupee so overdrawn. But it often happened that a Company which had overdrawn its account one month was able the next to pay in large sums in advance. We had lately had such instances of Railway Companies which had overdrawn their accounts to the extent of ten lakhs of Rupees, and while we were considering the course to be adopted, a later return received from England showed that they had paid in large sums in England, more than sufficient to carry them through the season. In a case like this, it would have been both unnecessary and unjust to have published the Railway managers to the world as defaulters, when all the time they were perfectly solvent, though we did not know it.

With regard to the request in the Petition for explanations and statements concerning the expenditure of the Military Department for the Indian service in England, he had only to observe that the matter rested entirely with the Secretary of State for India, who was responsible to Parliament, and not to this Government or this Council, for his action in the matter; and this was therefore a subject, on the discussion of which he need not now enter.

Had the information been sought as to Indian charges, though it could not have been given in a complete shape, it would have been easy to have satisfied the Honorable gentleman, that the Government were not wanting in their duty in the matter. The Military and Police Commissioners were both working with efficiency to reduce the charges for the protective forces, and there were few days in which some satisfactory proof was not afforded of the effect with which Colonel Balfour, the energetic President of the Military Finance Commission, was carrying out the views of Government in effecting a reduction of the present military charges. He had just received a return, showing that in Madras the total established strength of Non-Commissioned rank and file, which stood in August 1859 at 92,651 men

had been reduced in November last to 59,402, and, counting all supernumeraries still unprovided for, to an actual strength of 64,110, making a reduction in the number of men paid for of 28,541 within fifteen months. Facts like this, showing how energetically the Honorable Mr. Morehead and his colleagues in the Government of Madras, including the Commander-in-Chief, Sir Patrick Grant, were working to carry out the orders of the Government of India, could be multiplied, and in every branch of the service; but they were all isolated instances, and it was not possible at present to place them in an aggregate form, or to do more than show that the work of reduction was proceeding vigorously.

With regard to the protest against any payments in accordance with orders from the Secretary of State for India to certain Native families, and the request for information regarding the grant, he would not enter on the question. Assuming that the accounts of this transaction, which originated, he believed, with the members of the family referred to, were correct, it would be obvious to the Council that, as the orders emanated from the Secretary of State, who was responsible to Parliament, and not to this Council or to the Government of India, the matter was one with which this Council could not interfere; and as it was in no way connected with any matter before the Council in the course of legitimate discussion, he must decline to discuss it or to express any opinion on its merits.

So, with regard to the doubts expressed as to the repayment of advances on account of the China war, he was not quite sure, whether he understood the object of the question, but he found that our cash advances in this country, in payment of Bills drawn on us from China, amounted to about eighty-three lakhs, exclusive of commissariat, ordnance, and medical stores, for some months, the accounts of which have not been sent in. Every Rupee of the sums thus advanced by us would have to be repaid from the English Exchequer to the Secretary of State, and as we should have, under any circumstances, to remit a very much larger sum to meet the Home charges of the Indian Government, the arrangement was a mutual convenience to both parties.

In conclusion, he had only again to assure his Honorable friend the Member for Bengal, that in what he had said he had been actuated solely by a conviction as to what were the proper functions of this Council, and by no desire to avoid the fullest and most complete publicity with regard to all matters which could be of any practical importance to the petitioners. He could only repeat that, if they would apply to the proper Department of the Executive Government, there was on the part of the Executive Government every disposition to afford them all reasonable information with regard to public income or expenditure in any matter which they were really of opinion affected their interests.

MR. SCONCE apologised to the Council for being obliged to occupy its time again for a few moments. He might state explicitly that he did not in any way allude in his former remarks to the cause of delay in publishing the detailed information respecting the estimates. He was perfectly satisfied that the Government was doing its best to perfect those estimates, and he had no doubt that it was not in the power of the Government to have produced the estimates by the time stated in the Petition. He should have wished however that some better assurances had been given, to which the position of the Council entitled it, that the Government would submit for the satisfaction of the Members of this Council such information in connection with those estimates as not only now but at all times must materially help the administration. It was not enough to say that Government would furnish information on the application of eminent public bodies. But he should have been glad if what had fallen from the Honorable the President in Council did not seem to imply that whatever information would be afforded on the application of public bodies, would not be given at the instance of a

Member of this Council. He saw no longer the expediency of concealment with regard to the Railway Accounts. His object simply was to be informed on the subject, and he therefore asked that the amount of the total subscriptions, the amount of the total disbursements out of the subscriptions, and the balances such as they might be of each Railway Company, should be disclosed, and he could not agree with the Honorable the President in Council, as his Honorable friend assumed that he (Mr. Sconce) would do, that the publication of those accounts would be attended with any disadvantage. A Railway Company was a public Company, and must not be put upon the same footing as private individuals Nothing was more notorious than the publication of the accounts of Banks, which were periodically printed and published for general information. Certainly he saw no disadvantage of which any Railway Company need be apprehensive by this publication, and he must dissent from the views of his Honorable friend on two grounds: *First.*—He thought that the information sought for should not be withheld in the interest of the Railway Companies; and *secondly*, he saw no necessity for restraining Members of this Council from asking for such information. His Honorable friend was better acquainted than we were with the details of the expenditure incurred in England. In speaking of this matter, he (Mr. Sconce) spoke as any other man. The Parliament of England looked after its own charges, but did not look after charges paid in England out of the revenues of India. The last question he had put was with reference to the supposed endowment in favor of the Mysore Family. He had understood the Honorable the President of the Council of India to say that the local Government of India had no power to contest the authority exercised by the Right Honorable the Secretary of State; but for himself he (Mr Sconce) had raised no question as to the power of the Government of India; he asked what the Secretary of State had done, not what he had the power to do; and it seemed to him the refusal of the President in Council to supply the information he had sought, was hardly consistent with the professed desire of the Government not to withhold any information. These were the grounds of his dissent from the views expressed by his Honorable friend.

SIR BARTLE FRERE said, he would not prolong this discussion farther than to remind his Honorable friend that what he stated was not that the Government of India would refuse to this Council or to any other public body what the Government of India was willing to give to private individuals, but simply to point out that this Council was not the right place to put questions which could have no bearing on Legislative proceedings. If any body of men, public or private, required such information as the Honorable gentleman described, the proper quarter to apply to was the Executive Government, and what he meant to say was that there would be no disposition on the part of the Executive Government, when applied to, to withhold any information which could be reasonably asked for by any body, public or private.

With regard to the Home charges, that was a matter wholly under the control of Parliament. We had no power of interference in the matter. He would not enter farther into a discussion on the subject, and would only apologize to the Council for the length to which he had occupied their time, which he should not have done if he had received more timely notice of the Honorable Gentleman's questions.

With regard to the Railway Accounts, he held in his hand two consecutive statements, showing the state of each Company in two successive months, which would illustrate the difficulty to which he had alluded. In one month he found that only one Company had been behind-hand, while in the month preceding three Companies had been so entered. As he said before, while Government were actually considering what to do with respect to a Company which was believed to have been behind-hand, Govern-

ment received returns of a month later, showing that the Company had ample funds in the Treasury, which had been intermediately paid in. It would surely not have been just to have proclaimed the Company as bankrupt on the ground of such a slight delay in payment.

MR. SCONCE then moved that the Petition be printed.

THE VICE PRESIDENT said, he should have been very glad if, when the question was put by the Honorable Member for Bengal to the Honorable the President of the Council, we had received some further information as to one of the subjects to which the Petition this day presented to the Council related, and that was the alleged order of the Secretary of State to the Government of India, to pay a large sum of money to certain Native families. With reference to that question, no contradiction had been offered. The Honorable the President of the Council had contended that, assuming what had been stated in the public prints to be correct, it was beyond the competency of this Council to interfere in the matter. Now what he understood the public papers to have said was that a large sum had been ordered by the Secretary of State to be paid to the Mysore Princes; whether to Prince Gholam Mahomed or to other Members of the family, he (The Vice President) did not know. He understood the President of the Council to say that the powers formerly vested in the Court of Directors and in the Board of Control were now vested in the Secretary of State, so that the Secretary of State exercised the double functions. In some matters, however, he could not act without the concurrence of the Council of India. Assuming that an order had been sent out, we did not know whether it was an order of the Secretary of State alone, or of the Secretary of State in concurrence with a majority of the Indian Council. But upon the assumption that the statement in the public papers was correct, we knew that a large sum had been ordered to be paid out of the Revenues of India, and he must say that in his opinion it was not beyond the legitimate duty of this Council to enquire into the circumstances of the grant in question. We had lately passed an Act for the imposition of an Income Tax on all Incomes above 200 Rupees. We had also passed a Stamp Act, and greatly raised the Customs Duties, and we should shortly be asked to pass a tax which would fall on the lowest classes, in the shape of a license tax upon trades yielding a profit of less than 200 Rupees a year. Now when the expenses of India exceeded its Revenues, and the Council was called upon to pass Acts for the purpose of supplying the deficiency by imposing taxes upon the people, he thought it was the legitimate duty of the Council to see how those Revenues were to be applied. By the last Charter Act by which the East India Company were prevented from trading, the whole of the territories and Revenues of India were vested in them in trust for Her Majesty for the Government of India, and if the Court of Directors had still existed, we should have had a right, when asked to authorize the levy of taxes, to ascertain how they were to be applied. Suppose this Council had passed an Income Tax and a Stamp Act, and had raised the Custom Duties, and were about to impose a tax on trades which would reach incomes of 200 Rupees a year, and the Court of Directors had ordered the payment of a large sum of money to the Mysore Princes, it would have been entirely within the competency of this Council to enquire into the manner in which the proceeds of those taxes were about to be disposed of. The same obligation rested upon the Council now that the Government of India was transferred to Her Majesty. He believed that the Mysore Princes had no claim whatever, either equitable, legal, or moral, to the grant. He believed that the individuals now composing the Mysore family were never the objects of the provision made by the Partition Treaty of Mysore for the families of Hyder Ally and of Tippoo Sultan. He be-

lieved that the family for whom that provision was made did not include these parties. He would call attention to the Treaty. The Treaty was not one between the Government of India and Tippoo, but between the Government of India and the Nizam who had conquered Tippoo, and under that Treaty a certain provision was made for the families of Hyder Ally and of Tippoo. There was no stipulation in that Treaty that any part of that money should go to the descendants of Tippoo, and it was not only with alarm but also with surprise that he saw the announcement of such an order having been sent out to the Government of India. When we considered that the estimated produce of the Income Tax in 1860-61 was only one million, and that that sum was to be raised by a tax upon persons whose incomes amounted to 200 Rupees a year, was it fair, just, or proper to pay away large sums of money to persons who had no just claim to them? Was this Council to be asked to tax the people when the Secretary of State was making voluntary donations? It was doubtful whether even with the aid of these taxes the income of the State would be sufficient to meet the expenditure. If money was to be borrowed, it did not much matter whether it was borrowed here or in England. He recollected the statement made by the late Mr. Wilson, that the taxes were raised for the purpose of preventing Government from getting into debt and of enabling it to make income and expenditure meet. Now, if he showed that the grant in question was merely a voluntary gift, he would ask the President of the Council where the money was to come from, and how such a power was vested in the Government of India, by which term he meant whomsoever had the supreme management of the affairs of India. The Treaty was entitled a

"Treaty for strengthening the alliance and friendship subsisting between the English East India Company Bahadoor, His Highness the Nabob Nizam-ud-Dowla Asoph Jah Bahadoor, and the Peishwah Row Pundit Purdhan Bahadoor, and for effecting a settlement of the dominions of the late Tippoo Sultan."

The Preamble recited as follows:—

"Whereas the deceased Tippoo Sultan, unprovoked by any act of aggression on the part of the allies, entered into an offensive and defensive alliance with the French, and admitted a French force into his army, for the purpose of commencing war against the Honorable English Company Bahadoor, and its allies Nizam-ud-Dowla Asoph Jah Bahadoor, and the Peishwah Row Pundit Purdhan Bahadoor; and the said Tippoo Sultan having attempted to evade the just demands of satisfaction and security made by the Honorable English Company and its Allies, for their defence and protection against the joint designs of the said Sultan and of the French, the allied armies of the Honorable English Company Bahadoor and of his Highness Nizam-ud-Dowla Asoph Jah Bahadoor, proceeded to hostilities in vindication of their rights, and for the preservation of their respective dominions from the perils of foreign invasion, and from the ravages of a cruel and relentless enemy.

And, whereas, it has pleased Almighty God to prosper the just cause of the said Allies, the Honorable English Company Bahadoor, and His Highness Nizam-ud-Dowla Asoph Jah Bahadoor, with a continual course of victory and success, and finally to crown their arms, by the reduction of the capital of Mysore, the fall of Tippoo Sultan, the utter extinction of his power, and the unconditional submission of his people; and whereas the said Allies, being disposed to exercise the rights of conquest with the same moderation and forbearance which they have observed from the commencement to the conclusion of the late successful war, have resolved to use the power which it has pleased Almighty God to place in their hands, for the purpose of obtaining reasonable compensation for the expenses of the war, and of establishing permanent security and genuine tranquillity for themselves and their subjects, as well as for all the powers contiguous to their respective dominions; wherefore a treaty for the adjustment of the territories of the late Tippoo Sultan between the English East India Company Bahadoor and His Highness the Nabob Nizam-ud-Dowla Asoph Jah Bahadoor is now concluded by Lieutenant-General George Harris, Commander-in-Chief of the Forces of His Britannic Majesty, and of the English East India Company Bahadoor in the Carnatic and on the Coast of Malabar, the Honorable Colonel Arthur Wellesley, the Honorable Henry Wellesley, Lieutenant-Colonel William Kirkpatrick, and Lieutenant-Colonel Barry Close, on the part and in the name of the Right Honorable Richard, Earl of Mornington, K. P., Governor General for all affairs, Civil and Military, of the British Native in India, and by the Nabob

Meer Alum Bahadoor, on the part and in the name of His Highness the Nabob Nizam-ud-Dowla Asoph Jah Bahadoor, according to the undermentioned articles.

Thus it appeared that Tippoo and his family were no parties to this Treaty.

The 1st Article provided as follows:—

"It being reasonable and just that the Allies by this treaty should accomplish the original objects of the war (namely, a due indemnification for the expenses incurred in their own defence, and effectual security for their respective possessions against the future designs of their enemies), it is stipulated and agreed, that the districts specified in the Schedule A, hereunto annexed, together with the heads of all the passes leading from the territory of the late Tippoo Sultan to any part of the possessions of the English East India Company Bahadoor, of its Allies or tributaries situated between the Ghâts on either coast, and all forts situated near to, and commanding the said passes, shall be subjected to the authority, and be for ever incorporated with the dominions of the English East India Company Bahadoor, the said Company Bahadoor engaging to provide effectually, out of the revenues of the said districts, for the suitable maintenance of the whole of the families of the late Hyder Alli Khan and of the late Tippoo Sultan, and to apply to this purpose, with the reservation hereinafter stated, an annual sum of not less than two lakhs of Star Pagodas, making the Company's share as follows:—

Estimated value of districts enumerated in the Schedule A, according to the statement of Tippoo Sultan, in 1792, Canterai Pagodas	7,77,170
Deduct provision for the families of Hyder Alli Khan and of Tippoo Sultan, two lakhs of Star Pagodas in Canterai Pagodas ..	2,40,000
Remains to the East India Company ..	5,37,170"

Article 2 provided as follows:—

"For the same reason stated in the preceding articles, the district specified in the Schedule B annexed hereunto, shall be subjected to the authority and for ever united to the dominions of the Nabob Nizam-ud-Dowla Asoph Jah Bahadoor, the said Nabob having engaged to provide liberally, from the revenues of the said districts, for the support of Meer Kummer-ud-deen Khan Bahadoor and of his family and relations, and to grant him for this purpose *a personal jaghir* in the district of Gurrumcondah, equal to the annual sum of 2,10,000 Rupees, or of 70,000 Canterai Pagodas, over and above and exclusive of a jaghir, which the said Nabob has also agreed to assign to the said Meer Kummer-ud-deen Khan, for the pay and maintenance of a proportionate number of troops to be employed in the service of his said Highness, making the share of His Highness as follows:—

Estimated value of the territory specified in Schedule B, according to the statement of Tippoo Sultan, in 1792, Canterai Pagodas..	6,07,332
Deduct personal jaghir to Meer Kummer-ud-deen Khan, 2,10,000 Rupees, or ..	70,000
Remains to the Nabob Nizam-ud-Dowla Asoph Jah Behadoor	5,37,332."

It should be observed that the grant to Kummer-ud-deen was to be a mere *personal jaghir*, and that in estimating the value of the districts assigned to the East India Company, the annual amount to be applied for the family of Tippoo was deducted, leaving a balance of 5,37,170 Canterai Pagodas a year to the East India Company. In the same manner the annual amount of the personal jaghir to Kummer-ud-deen was to be deducted in estimating the value of the districts assigned to the Nizam, leaving him a balance of 5,37,332 Canterai Pagodas a year. Thus it appeared to have been intended that the contracting parties should take equal portions of the conquered districts. But if it were intended that the provision to be made by the East India Company was to be for the descendants of Hyder Ally and Tippoo Sultan in perpetuity, whilst the provision to be made by the Nizam was to be by a mere personal jaghir to Kummer-ud-deen, the value of the deductions to be made from the districts assigned to the parties respectively would not have been valued upon the same principle. From this it seemed clear, independently of the absence of the words "heirs or descendants," that the provision for the families of Hyder and Tippoo were intended for those then in existence, and not for their descendants for ever. But this would appear still clearer when Article 6 of the Treaty was referred to. In that Article it was provided as follows:—

"The English East India Company Bahadoor shall be at liberty to make such deduc-

tions from time to time from the sums allotted by the first Article of the present Treaty for the maintenance of the families of Hyder Ali Khan and Tippoo Sultan, as may be proper in consequence of the decease of any member of the said families."

He believed there was only one son of Tippoo now living, he meant Prince Gholam Mahomed. The other members of the family now existing were descendants of the second, third, and fourth generations. Now, was it to be said that these parties were to have all the accumulations of the 2,40,000 Pagodas a year, which, allowing three Rupees to the Pagoda, was equal to the annual sum of 7,20,000 Rupees? There was another Schedule (Schedule D) which related to the Peishwah's share. But he did not agree, and fresh Articles were entered into between the East India Company and the Nizam, which provided as follows:—

"With a view to the prevention of future altercations, it is agreed between His Highness the Nabob Nizam-ud-Dowlah Asoph Jah Bahadoor and the Honorable English East India Company Bahadoor, that to whatever amount the stipends appropriated to the maintenance of the sons, relations, and dependants of the late Hyder Ali Khan and Tippoo Sultan, or the personal Jaghir of Meer Kummer-ud-Deen Khan shall hereafter be diminished, in consequence of any one of the stipulations of the Treaty of Mysore, the contracting parties shall not be accountable to each other on this head.

And it is further agreed between the contracting parties, that, in the event provided for by the eighth Article of the Treaty of Mysore, two-thirds of the share reserved for Row Pundit Purdhaun Bahadoor shall fall to His Highness the Nabob Nizam-ud-Dowlah Asoph Jah Bahadoor, and the remaining third to the Honorable English East India Company Bahadoor.'

These Articles also confirmed the view, that the provision for the family of Tippoo was not intended for his heirs and descendants for ever.

He viewed the order with alarm and surprise. With alarm, on account of the dangerous nature of the precedent, and the numerous other claims to which it would give rise. With surprise, because the ink was scarcely dry on the document which was supposed to be a final settlement of the question by which the allowances to the Mysore family had already been increased. Was it to be said that the Council had no right to ask for information with regard to that which upon the assumption of the President of the Council appeared to be a lavish expenditure? If the Secretary of State wished to make a donation to the Mysore family, let him go to the British Parliament and ask for power to borrow money for the purpose, and see what they would say to the matter. He (The Vice President) wished to know upon what grounds the payment had been ordered. If the Mysore family had any just claim to the arrears, were they not equally entitled to have the annual sum of 2,40,000 Canterai Pagodas continued to them? In the absence of the information asked for, it appeared to him that the family had no legal, equitable, or moral right to the money which he understood had been ordered to be paid. He might be wrong, and if a refusal of the grant would involve any breach of faith, that would be a different matter altogether, and he (the Vice President) would be the last man to object to the payment. Possibly the Secretary of State had given reasons which would satisfy the Council of the justice of the grant, and he (the Vice President) was open to correction. But let them have the information which had been asked for, and they would then be better able to form an opinion. As far as he could at present judge of the case from an examination of the Treaty, it appeared to him that this payment was a mere voluntary donation on the part of the Secretary of State. He thought that this Council had a perfect right to enquire into the matter. Surely they were not to be called upon to tax the people without making enquiry as to the mode in which the money was to be expended. All the revenues were appropriated to the service of the Government of India, and were they not to ask for information when they were led to believe that a grant of nearly half a million sterling of the revenues of the State was about to be made as a mere voluntary donation? He (the Vice President) doubted whether the Council ought to pass the

Licensing Bill until full explanation of these matters was afforded The reasons of the Secretary of State would appear if his Despatch was laid before the Council.

He (The Vice-President) thought that he should have been out of order had he made these observations at an earlier stage, when only a question had been asked, and there was no Motion before the Council. But now that the Honorable Member for Bengal had moved that the Petition be printed, he thought that, in voting for that motion, he had a right to make a few observations with regard to one of the questions raised in the Petition, and he begged to give notice of his intention to move for the production of the papers relating to that matter.

SIR BARTLE FRERE said, he had at the present stage only one observation to make in reference to what had fallen from the Honorable and learned Vice-President, and that was to guard himself against being supposed to express any opinion on the subject of the grant which had been discussed by the Vice-President. His view of the question was that it was one *ultra vires* of this Council to discuss.

The Motion to print the Petition was then put and carried.

VACATIONS (CIVIL COURTS).

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding for consideration, in connection with the Bill "to amend the law relating to Vacations in the Civil Courts within the Presidency of Fort William in Bengal," a copy of a Despatch from the Secretary of State regarding the holidays to be allowed in Judicial Courts.

LICENSE DUTY ON TOBACCO.

THE CLERK reported that he had received a communication from the Home Department on the subject of levying a special License Duty on the sale of Native-grown Tobacco.

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

STAGE CARRIAGES.

THE CLERK reported that he had received a communication from the Assistant Manager of the North Western Dâk Company, relative to the Bill "for licensing and regulating Stage Carriages."

MR. HARINGTON moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

THE CLERK reported that he had received a communication from the Coroner of Calcutta relative to the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcuttta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca.)"

MR. FORBES moved that the communication lie on the table.

Agreed to.

FLOGGING.

MR. HARINGTON presented the Report of the Select Committee appointed to prepare a Bill to provide for the punishment of flogging for certain offences under the Penal Code, and gave notice that, on Saturday next, he would move that the Report be adopted, and that the Bill appended thereto, which had been prepared by the Select Committee under the instructions given to it, be read a first time.

RAILWAYS.

MR. FORBES presented the Report of the Select Committee on the Bill "to amend Act XVIII of 1854 (relating to Railways in India)."

RECOVERY OF RENTS (BENGAL).

MR. SCONCE presented the Report of the Select Committee on the Bill "to amend Act X of 1859 (to amend the law relating to the Recovery of Rent in the Presidency of Fort William in Bengal)."

PORT-DUES (AMHERST).

MR. SCONCE moved that the Bill "for the levy of Port-dues in the Port of Amherst" be now read a second time.

The Motion was carried, and the Bill read a second time.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca);" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I was passed after an amendment.

Section II was passed as it stood.

Section III was passed after amendments

Section IV was passed after amendments, including the addition of the following new Clause, on the motion of Mr. Forbes :—

"It shall be lawful for the said two Magistrates and the said Court of Petty Sessions respectively, if they deem that the charge is from any circumstances fit to be made the subject of prosecution by indictment rather than to be summarily disposed of, to commit the person charged for trial before the Supreme Court or Court of Judicature."

MR. FORBES moved the introduction after Section IV of the following Section, being a re-enactment of Section XXXIII of the existing Act, with a verbal amendment :—

"Upon a conviction for any of the offences mentioned in Sections XXVII, XXVIII, and XXIX of Act XIII of 1856, or under the foregoing Section of this Act, the Magistrate or Magistrates (as the case may be), and in Bombay the Court of Petty Sessions in cases committed to that Court, may order the restitution of the property forming the subject of the charge, if forthcoming, to the owner: and in case of its not being restored pursuant to such order, may impose on any person refusing or neglecting to restore the same, a fine not exceeding the value of the said property, which the Magistrate or Court may order to be paid to the owner or his representative."

Agreed to.

MR FORBES then moved the introduction of the following Section after the above being a re-enactment of Section XXXIV of the existing Act, with a verbal amendment :—

"Upon a conviction for any of the offences mentioned in Sections XXVII, XXVIII, and XXIX of Act XIII of 1856, and in Section IV of this Act, the Magistrate or Magistrates (as the case may be), and in Bombay the Court of Petty Sessions, in cases committed to that Court, may impose upon the offender, in addition to the punishment for the offence, a fine not exceeding the loss appearing to be caused to the persons who have suffered thereby, and may pay or distribute the proceeds of the said fine or any part thereof, to or for the benefit of the said persons."

Agreed to.

Sections V to VII were passed as they stood.

Section VIII was passed after a verbal amendment.

Section IX was passed as it stood.

Section X was passed after an amendment.

Sections XI to XIV were passed as they stood.

Section XV was passed after amendments.

Section XVI was passed as it stood.

Section XVII was passed with the insertion of the following new Clause after Clause 3, on the Motion of Mr. Forbes :—

"Whoever, without reasonable cause, shall drive a carriage, cart, or other vehicle otherwise than on the left or near side of the road."

MR. ERSKINE moved the introduction of the following new Section after Section XVII :—

"The Commissioner of Police in Bombay shall, from time to time, subject to the orders of the local Government, make and publish in the Government Gazette rules for the blasting of rocks in or near any public road, street, thoroughfare, or place, in the Islands of Bombay and Colaba; and may give licenses for such operations when he shall think fit; and every person who shall blast any such

rock otherwise than according to the provisions of such rules, or who shall violate any condition of a license granted under this Section, shall be liable to a fine not exceeding one hundred Rupees."

Agreed to

Section XVIII was passed after a verbal amendment.

Sections XIX to XXI were passed as they stood.

THE CHAIRMAN moved that the Clerk of the Council be requested to read the communication, which was reported to-day, from the Coroner of Calcutta, relative to the Bill now under consideration.

The Motion was carried and the letter read.

MR. FORBES remarked that the opinion of the Advocate General, which was appended to the above communication, appeared to be adverse to the suggestion of the Coroner, and he (Mr. Forbes) had not therefore considered it necessary to make a motion on the subject

The remainder of the Bill was then passed as it stood; and the Council having resumed its sitting, the Bill was reported with amendments.

EMIGRANT VESSELS.

SIR BARTLE FRERE moved that the Council resolve itself into a Committee on the Bill "relating to vessels carrying Emigrant Passengers to the British Colonies," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

VACATIONS (CIVIL COURTS).

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to amend the law relating to Vacations in the Civil Courts within the Presidency of Fort William in Bengal."

Agreed to.

THE CHAIRMAN moved that the Clerk of the Council be requested to read the Despatch from the Secretary of State, which had this day been reported.

The Motion was carried, and the Despatch read as follows :—

"TO HIS EXCELLENCY THE RIGHT HONORABLE THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

MY LORD,

Judicial, No. 140.

1. Your letter, dated 27th June, No. 47, 1860, transmitting copy of a correspondence with the Government of Bengal regarding the holidays to be allowed in the Judicial Courts, has been laid before me in Council.

2. The opinions which are to be found in the Minutes of the Sudder Judges and in the Returns of the several District Officers, are not altogether satisfactory, as they have evidently been recorded in ignorance of the suggestion contained in Lord Stanley's Despatch No. 3, of the 19th January 1859, to the effect that 'a period of relaxation might be given to the Civil Courts for such a term and at such time of the year as might be deemed advisable, and the Courts open for public business on all other days (with such special exceptions as may be deemed proper) on the understanding that no native officer or servant of the Government will be compelled to attend and no party shall suffer loss from absence on any occasion which has been generally recognized in public offices as one of observance by the religion which he professes.'

3. With reference to the various suggestions which have been made, I approve of the long vacation being fixed at a month, to be allowed at such time of the year as your Excellency in Council may deem advisable.

New Year's Day.
Good Friday
Queen's Birthday.
Christmas Day

4. The Courts will further be closed on Sundays, and on the four days noted in the margin.

5. I also approve of your suggestion to the Government of Bengal that 'in addition to the holidays above-mentioned, fifteen days leave from office in the year might be allowed to the Native Judges and the Ministerial Officers of the Judicial Courts without reduction of pay, on the understanding that the Courts generally shall not be closed, except for the long vacation and on the English holidays above-mentioned.

6. I request that you will take immediate measures for the repeal of Section II Regulation III. 1798 of the Bengal Code and of the corresponding enactments in any other Regulations or Acts passed by the Indian Legislatures, and thus place the regulation of holidays in the hands of the local Governments.

I have the honor to be, &c.,

(Signed) C. WOOD."

London, 31st October 1860.

MR SCONCE observed that the object of the Bill now under consideration was simply to do what the Secretary of State suggested in the final paragraph of his Despatch, as far as regarded the Bengal Presidency.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

ROHILCUND DIVISION.

MR. HARINGTON gave notice that he would, on Saturday next, move the first reading of a Bill to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts.

CRIMINAL PROCEDURE.

MR. HARINGTON moved that certain Minutes recorded by the Judges of the Court of Nizamut Adawlut for the North-Western Provinces on the subject of the preliminary investigation by Police Officers in cases of offences cognizable by those Officers, be printed and referred to the Select Committee now sitting on the Code of Criminal Procedure for such consideration and notice in the Report to be submitted by them as they might deem proper He said that copies of these Minutes had not yet reached him from the Government of the North-Western Provinces, though he was daily in expectation of receiving them. The copies which he held in his hand had come to him direct from the Sudder Court, the Court having probably observed the re-appointment of a Select Committee to consider some portions of the Criminal Procedure Code and the instruction given to the Committee to make its Report without delay; and as the Committee was now sitting and engaged in performing the task assigned to it, he had thought it better, in order to save time, not to wait until he heard from the North-Western Government, but to move that the Minutes of the Sudder Judges be printed at once and laid before the Committee.

Agreed to.

MR. HARINGTON also moved that the Extracts from the Despatches received from the Secretary of State for India and communicated to the Council, relative to those Chapters of the Code of Criminal Procedure which treated of trial by Jury and appeals, be referred to the same Committee, and that the Committee be instructed to propose any modifications of the Chapters in question which they might consider desirable.

Agreed to.

PORT-DUES (AMHERST).

MR. SCONCE moved that the Bill "for the levy of Port-dues in the Port of Amherst" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, and the Mover.

Agreed to.

The Council adjourned

Saturday, December 15, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble Cecil Beadon,	A. Sconce, Esq.,
H. B Harington, Esq.,	Hon'ble Sir C. R. M. Jackson, and
	C. J. Erskine, Esq.

RECOVERY OF RENTS.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding the Returns called for in Message No. 160, dated 25th June 1860, regarding claims relating to the recovery of rent preferred in the Revenue Courts of the Lower Provinces of Bengal.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

ESCAPED CONVICTS.

MR. ERSKINE presented a communication which he had received from the Bombay Government, relative to

sentences to be passed on escaped convicts, and moved that it be laid upon the table and referred to the Select Committee on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

Agreed to.

FLOGGING.

MR. HARINGTON moved the first reading of a Bill "to provide for the punishment of flogging in certain cases." In doing so, he said, previously to making the Motion that the Report of the Select Committee on the punishment of flogging be adopted by the Council, and that the Bill appended thereto, be read a first time, he wished to explain the views which he entertained on the question of flogging as a punishment for criminal offences, and to offer a few remarks upon some of the more important provisions of the Bill which had been prepared by the Select Committee under the instructions given to it.

Individually, he disliked, and he had always been opposed to the punishment of flogging, which must, he thought, be regarded as, in a greater or less degree, a demoralizing punishment, and neither as a Judge nor as a Magistrate did he ever remember to have administered it. As a general rule, he was of opinion that where, in its effect, the punishment of flogging was likely to be more demoralizing on the character of the person flogged than imprisonment in jail, and where, at the same time, it was not found to be much more efficacious in deterring from the commission of crime, which should be the object chiefly aimed at in all punishments, it had better not be inflicted. It was not because he liked the punishment of flogging that he considered that it should find a place in the Indian Penal Code. He repeated that he disliked it, but he conscientiously believed that, in the present state of Indian society, taking the British possessions in India as a whole, and not confining their attention to any particular part, the punishment of flogging would be found in certain cases a suitable and, comparatively, a humane and merciful, if not a necessary, punishment. It was under this conviction that the Select Committee proposed that it should be allowed in the cases which would be found described in the Bill prepared by that Committee. He used the word "allowed," because the Select Committee did not propose that the punishment should be imperative in any case, but permissive only.

He (Mr. Harington) was quite willing to admit that if they had to legislate in this matter for the Presidency Towns alone, or for only those Sections of the community, whether to be found in the Presidency Towns or elsewhere, which had attained to a high degree of civilization, the case would be quite different, and the addition of the punishment of flogging to the penalties prescribed in the Penal Code, would be of very questionable propriety. But the Indian Penal Code would apply not to the Presidency Towns alone and to the comparatively small number of Europeans scattered over the Mofussil, but to the whole of this vast country extending from the Himalayas to the Sea. Not to the civilised classes alone to which he had referred, but to the barbarous tribes to be found in the Punjab and other places, and to all the intermediate classes; to people who were to be counted not by hundreds or by thousands, but by tens of millions. Few who were acquainted with the state of native society beyond the Presidency Towns, or who had had the opportunity of observing the classes of persons who usually came before the Mofussil Courts charged with criminal offences, would, he thought, deny that flogging was a suitable and proper punishment for them—very much more so in the great majority of cases than imprisonment for long periods, and that in its effects it was little, if at all, more demoralising on the native character. If such was the case, it surely behoved them to pause and consider well before they discontinued the punishment of flogging in the Presidencies of Madras and Bombay, and in the Punjab and Oude, in all which places it might

now be administered for very many more offences than would be found mentioned in the Bill prepared by the Select Committee. True, the punishment was abolished in the Bengal Presidency beyond the Presidency Town, by a Regulation passed so long back as 1834: but the policy of its abolition had long been questioned, and the punishment was resorted to, he might almost say with eagerness, in the North-Western Provinces, when during the period of the late disastrous events, the law was temporarily suspended in those Provinces.

It seemed to be thought by some, that in the matter of punishments in this country, class distinctions might not improperly be allowed, but he submitted that legislation had rarely, if ever, taken that form either here or at home, and he considered that recourse to it on this occasion would not only be highly objectionable, but that it was quite unnecessary. In the course of the debates which had taken place on the question of flogging as a punishment for criminal offences, allusion had more than once been made to the Act which was passed some years ago in England, to prevent outrages on Her Majesty. That Act, which allowed the punishment of flogging for the offence, was of general application. It applied alike to the Peer of the Realm, to the meanest citizen, and to the most illiterate peasant. In Ceylon they were told by their late Honorable and learned Colleague, in the admirable speech which he delivered in that Council some years ago, that the district Judge with no other aid than that of three sleepy, useless and powerless Assessors, might imprison a British subject for a year, and give him one hundred lashes, and that the Police Magistrate without even that nominal aid, might imprison him for three months and give him twenty-five or fifty lashes. The 9th George IV, Chapter 74, for improving the administration of Criminal Justice in the East Indies, in the 21st Section, declared—

"That every person convicted of any felony not punishable with death, shall be punished in the manner prescribed by the statute or statutes specially relating to such felony, and that every person convicted of any felony, for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this Act, and shall be liable at the discretion of the Court to be transported to such place as such Court shall direct, for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped, if the Court shall so think fit, in addition to such imprisonment."

This law was of general application and made no distinction of races or classes, and so recently as the year 1856 that Council passed a law for the Presidency Towns, Act XIII of 1856, one of the Sections of which allowed the punishment of flogging in certain cases, whoever might be the offender. Under all these laws, the punishment of flogging was permissive only, not imperative. It was left to the presiding Judge to administer it in those cases in which he might consider it a suitable and proper punishment, and to abstain from administering it in those cases in which he might not so consider it. This was precisely what was proposed in the Bill prepared by the Select Committee. They did not hear that the discretionary power given to the various Courts which could administer the punishment of flogging in certain cases was abused, and he saw no reason to suppose that it would be abused under the proposed Bill, should it pass into law with the safe-guards which would be found contained therein.

Then again an opinion seemed to have got abroad that those who now advocated corporal punishment were proposing to revive a punishment which had long since been altogether abolished, and that consequently the present Bill was of a retrograde character, and as such, proceeded in the wrong direction. What he (Mr. Harington) had said as to the state of the law in Ceylon and some parts of India, including the Presidency Towns, would show how erroneous this opinion was, and that the Bill proposed by the Select Committee, whatever might be its claims to be regarded as a progressive measure, was scarcely open to the charge of retrogression.

He (Mr. Harington) would proceed now briefly to notice the principal provisions of the Bill. The Select Committee had selected for the punishment of flogging those offences, the punishment of which was regarded generally as peculiarly degrading, or he should perhaps more correctly say the punishment for which carried with it a greater amount of social and moral degradation than was the case as regarded the punishments for other offences. The offences selected by the Select Committee were theft, burglary, perjury, forgery, rape, unnatural offences, and indecent assaults upon women. He thought that in this respect the Select Committee had acted on a right principle. The Select Committee proposed that the punishment should be inflicted on males only. He (Mr. Harington) observed that it had been stated that he would flog females. The statement was a very silly one, and it was as untrue as it was silly. The Select Committee proposed that the punishment should be in substitution of, or in addition to, imprisonment. When administered by the Magistrate or a subordinate Officer, it must be in substitution. The Select Committee thought that this provision would operate very beneficially, both in saving many young offenders from the contaminating influences inseparable from imprisonment in a Criminal Jail, and the evil consequences which generally ensued therefrom, and in preventing the crowding of the jails. The events of the years 1857 and 1858, to which he had already referred, had taught us this amongst other important lessons, that it was highly inexpedient that large crowded jails, whether Central or District, should be scattered over the country, and the fearful sickness and mortality which prevailed almost periodically in the mofussil jails, furnished another and a very powerful argument in favor of limiting the number of persons confined therein as much as possible, which could only be done by substituting transportation for short periods for which the Penal Code made provision, and flogging for imprisonment in jail. When the punishment was in addition to imprisonment, it would not be administered until two months after the date of the order, in cases open to revision by a superior Court. A Section had been introduced, which would prevent the infliction of the punishment on old and infirm men; and provision was made for limiting the number of stripes, for the administration of the punishment on summary conviction only by Magistrates or other Officers specially empowered, and for the execution of the sentence in the presence of a proper Officer.

These were the principal provisions of the Bill prepared by the Select Committee, and he thought they would show that, the suitability of flogging as a punishment in certain cases, and the desirableness of continuing it for those cases, being admitted, the Select Committee had evinced no desire to carry the law or the punishment beyond the necessities of the case.

The Bill was read a first time.

ROHILCUND DIVISION.

MR. HARINGTON moved the first reading of a Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts." He said, this Bill was introduced at the request of the Honorable the Lieutenant-Governor of the North-Western Provinces, in which the tract of country to which the Bill related was situated. As was remarked by him on a former occasion, when bringing in a Bill to remove two Pergunnahs in a district in the Province of Bundelcund, from the operation of the general Regulations, the introduction of Bills of this nature, which were intended to apply only to small tracts of country, the peculiar circumstances of which rendered it desirable to observe a different form of administration in them from what was generally observed, did not necessarily raise any question as to the superiority of what was called the non-Regulation system over the Regula-

tion system or *vice versâ*, and in the few remarks with which he should trouble the Council in explanation of the objects and reasons of the present Bill, it was not his intention to draw any comparison between the two systems, though at the proper time he should always be prepared to consider and discuss their respective merits.

The Bill related to eight Pergunnahs, the names of which would be found in the Schedule of the Bill. These Pergunnahs lay in the north of the Province of Rohilcund in the Terai, and skirted the Kumaon Hills. Previously to the mutinies three of the Pergunnahs formed part of the district of Moradabad, two of the district of Bareilly, and the remaining three of the district of Phillibheet. In the year 1858, they were made over to the management of the Commissioner of Kumaon, which was a non-Regulation Province. The transfer was avowedly temporary only, and was recommended rather by military than by administrative considerations. Subsequent experience had shown the inexpediency of continuing the existing arrangement. On this point, all the local authorities were agreed. But it was considered that it would be no less inexpedient to retransfer the Pergunnahs to the districts to which they formerly belonged, and there appeared to be a very general concurrence of opinion that they should be formed into a separate district under a single Officer at its head who, as was the case in the Punjab and other non-Regulation Provinces, should unite in his own person all the executive functions, Civil, Criminal, and Revenue, which in the Regulation Provinces were exercised to some exte t by d ff rent Officers. This was what had been strongly recommended by the Honorable the Lieutenant-Governor of the North-Western Provinces. The recommendation was entirely concurred in by the Supreme Government, and having been ordered to be carried out, the present Bill, which proposed to remove the Pergunnahs in question from the jurisdiction of the tribunals established under the general Regulations and Acts, was required to give effect to the arrangement. The Bill had been framed after the model of the Act which was passed some little time ago, on the Motion of the Honorable Member for Bengal, in relation to a portion of the district of Chittagong. It had appeared to him (Mr. Harington) that the form of legislation observed in that Act would be preferable on the present occasion to the form which was adopted in the case of the Bundelkund Pergunnahs, to which he had already alluded, and he had ascertained from the Honorable the Lieutenant-Governor of the North-Western Provinces that, *mutatis mutandis*, the Chittagong Act, that was Act No. XXII of the present year, would quite meet His Honor's views. Before bringing these remarks to a close, he would, with the permission of the Council, read two paragraphs from the letter of the Secretary to the North-Western Government to the Government of India, proposing the new a rangement. These paragraphs would show the Council to some extent the peculiar character of the tract of country to which the Bill related, and of the people who would be affected by it; the necessity that existed for the Bill, and the benefits which were expected to result from its introduction. The first paragraph said—

"The Pergunnahs which compose the Terai, occupy an area of about 1,000 square miles, and would therefore form territorially no inconsiderable charge. But when it is considered that the tract is admitted on all hands to be peculiar in its character, peopled partly by migratory Bhoksas and Tharoos, who, as Mr. Muir observes, "must be managed like children, and kept out of the way of usurers;" and when it is borne in mind, as further remarked by Mr. Muir, that "cultivators must be attracted by low rates, that the water which spreads over the country into swamps must be directed into drainage channels, that good drinking water must be provided, that works of irrigation must be constructed and maintained; and that a simple and patriarchal form of administration is what is required;" it will, His Honor thinks, be evident that the charge will be, not only a sufficient, but a responsible and onerous one, requiring energy, perseverance, and zealous devotion on the part of a separate Officer, who shall have no other duty to occupy his time or distract his attention."

The second paragraph went on to say—

"The Lieutenant-Governor is strongly of opinion that the Government is bound, in the cause of humanity and civilization, to do its utmost towards the reclamation of this swampy and pestiferous tract, and that in the prosecution of this work, it will consult its own interest in the addition to its revenue which the extension of cultivation, and the material improvement of the Pergunnahs must produce. It has been shown, His Honor trusts, that such improvement cannot be expected to result from the divided management of two or three different Collectors, whose duties are already so laborious that they could devote but little time or attention to their respective Terai Pergunnahs—that, on the contrary, it is only by the introduction of a completely uniform system applied, under the direction of a single energetic Officer, to the entire tract, that its gradual reclamation can be hoped for."

The Bill was read a first time.

ADMINISTRATION OF JUSTICE, IN THE SUPREME COURT (BOMBAY).

MR. ERSKINE, in moving the first reading of a Bill "for the improvement of the administration of justice and despatch of business in the Supreme Court of Judicature in Bombay," said that it would not be necessary for him to offer more than a few words of explanation. Although the Title of the Bill was certainly rather formidable, the Bill itself was a very simple one. It was intended merely to enable the Judges of the Supreme Court in Bombay to sit separately and simultaneously on the Civil side of the Court for the despatch of business, as one Judge is already empowered to sit separately on the Criminal side by Act XXI of 1847. The present Bill had been drawn in accordance with that Act, of which it was the complement. It had been drawn by the Judges of the Supreme Court themselves, and was recommended by the local Government and by the Supreme Government. He (Mr Erskine) did not wish to maintain that the principle of the Bill was in all respects an improvement on existing practice, had the Bill been desired as a permanent measure. But, in fact, it was sought merely as an *ad interim* measure, as a "temporary palliative" for inconvenience resulting from the accumulation of arrears in the Court at Bombay which could not otherwise apparently be cleared off, while it was impossible, in the existing uncertainty as to the future constitution of the Court to expect immediate relief in the shape of increased judicial assistance. But perhaps it would be better to allow the Judges to explain for themselves the circumstances under which this Bill was proposed, and he would therefore read to the Council a portion of their letter on the subject—

"We regret that it becomes our duty to observe to your Excellency in Council, that from causes beyond the control of the Judges, the general business of the Supreme Court has fallen into arrear.

The Court has now been sitting without intermission since the 5th of June, but the Equity Board of last June term is not yet disposed of, and the entire business for last August term, with some trifling exceptions, is in arrear.

The Criminal Sessions now intervene, and November will bring its own list of causes at all sides of the Court to add to the accumulation of arrears.

We do not on the present occasion propose to advert further to the obvious necessity for increased judicial assistance.

As a temporary palliative for public inconvenience, we desire to be empowered to sit apart, when necessary, for the contemporaneous despatch of each class of business, and we beg to forward a short clause framed for the purpose, in accordance with the principle of Act XXI of 1847."

This was the statement of Her Majesty's Judges themselves, and with these few words of explanation, he (Mr. Erskine) would merely now propose that the Bill be read a first time.

The Bill was read a first time.

MINORS.

MR. SCONCE moved the second reading of the Bill "to amend the law relating to Minors."

Mr. HARINGTON said, that he did not rise for the purpose of opposing the Motion for the second reading of this Bill, but before the Bill was read a second time and referred to a Select Committee, he should be glad to hear from the Honorable Member for Bengal

what were the material advantages which were expected to be obtained by the passing of the Bill. In the Statement of Objects and Reasons they were told that what was wanted was an affective tribunal; that at present they had Magistrates who could not interfere at all, and Civil Courts which could only interfere on the subject matter in dispute being laid as a regular suit subject to all the charges of ordinary plaints, and accordingly the Bill proposed to supply an effective Court, but in no other respects to deal with the law which should govern the adjudication of such disputes. It was not apprehended that the Courts would have any difficulty in dealing with the claims brought before them, and at present no legislation as to the substantive law applicable to the case was said to be called for. But how did the Bill supply the want here stated to exist, and how would a case brought under the Bill differ from an ordinary Civil Suit under Act VIII of 1859? The case was to be brought before the Judge by petition. A suit under Act VIII of 1859 commenced with a plaint. But as no thing more was allowed to be stated therein, except the claim and the date when it accrued, and the petition required by the present Bill could scarcely be prepared in a more concise or summary form, the difference between the two papers would be in the name only. The procedure under the Bill was to be that laid down in Act VIII of 1859, in so far as the same was applicable; so that in this respect nothing would be gained. The order made by the Judge was to be enforced as if made in a regular suit. This was precisely what was required to be done in respect to decrees passed in regular suits, and the same procedure would be followed. Lastly, there was to be an appeal to the Sudder Court, which was allowed from all decisions passed by a Zillah Judge in a regular suit, and here again the same procedure would be followed. So that under the Bill there would be all the stages of a regular suit, the only difference, in so far as procedure was concerned, being that the case would commence with a petition instead of a plaint. The petition was certainly to be written on the stamp paper prescribed for petitions only, instead of bearing the stamp duty prescribed for plaints, which appeared to be the only real change made by the Bill. This was a question of revenue. If the Government were willing to give up the higher duty, he (Mr. Harington) could have no objection, but the reduction might be made by an order of Government under the power given to it in a Section of the Stamp Act. No new law was necessary for the purpose and unnecessary legislation was always to be avoided. He (Mr. Harington) was no advocate for taxes on justice, and he should be very glad if the finances of the country would allow of the institution fee for regular suits being given up; but so long as the state of the finances required the retention of that fee, he did not see why an exception should be made in favor of the cases to which the present Bill related. The Bill had, he believed, originated in a representation from the Secretary of State for India, who pointed out that the law which regulated the disposal by the Magisterial authorities of cases connected with the guardianship of Minors seemed to be in a very uncertain state; that some Magistrates thought that they had power to interfere in such cases, while others considered that they had no jurisdiction, and that it was desirable that the law should be made clear on the point, but the present Bill did not expressly bar the jurisdiction of the Magistrates, and so far as he (Mr. Harington) could perceive, those Officers would still be at liberty to act or not as they might think proper, as they did under the existing law whenever a case was brought before them.

MR. SCONCE said, he had no doubt he should be able to satisfy the Council and the Honorable Member for the North-Western Provinces as to the opinion he had expressed regarding the necessity for this Bill. He would begin with the last point first, and that was the absence of any proposition as to the jurisdiction of Magistrates. Undoubtedly this Bill would not apply to matters which came under the cog-

nizance of the Criminal Courts. The Bill was purposely confined to claims to the custody of children that were of a purely Civil nature, and with such cases the Civil Courts alone could deal. When any violence should be used towards parent or child, it would necessarily be within the competency of a Magistrate to act, but such interference was exercisable without a new law, and it seemed to him unnecessary to make any reservation as to a Magistrate's powers in the present Bill.

As to the other matters alluded to, his purpose was to secure a summary jurisdiction for the trial of all claims that should arise relative to the proper custody of minors. He confessed however that he had not that anxiety with respect to the loss of revenue in the matter of Stamps, which his Honorable friend had just expressed. He was not disposed to adopt the suggestion thrown out, that the Governor-General-in-Council should be moved under the recent Stamp Act to remit the duty on plaints preferred in the cases contemplated. On the contrary, it seemed to him that no option should be given, and that the applications referred to should by law be declared chargeable merely as petitions. When he came to consider in what manner a remedy might by law be most effectually found for the difficulties now experienced in entertaining complaints on the subject of the custody of minors, it seemed to him to be essential to exempt applications from the Stamp Duty leviable upon the plaints of regular suits. Suppose a father wished to recover his son, in filing a regular suit, he would first have to consider the value he would put upon him Any Honorable Member might attempt to settle that matter for himself. If the boy were worth fifty Rupees, a plaint would cost four Rupees. But a father might wish to recover three sons, and if the value of each increased with his age the value of all the three boys might amount to nearly three hundred Rupees. In that case it would cost the father sixteen Rupees before his case could be heard. Now he was sure the Council would agree with him, that it was impossible to consider claims, such as these, to be properly chargeable with Stamp Duty, and that the hearing upon summary application should be facilitated. In this, as in other cases of a like kind, there seemed to him to be room for extending into the Mofussil Courts some of the more familiar forms of Equity jurisdiction. He might instance the Bill brought in some months ago by the Honorable and learned Judge near him (Sir Charles Jackson) on a matter affecting the relations of husband and wife: and certainly in that case, as in this, we were, he (Mr. Sconce) thought, bound to give relief without requiring the subject matter of plaints to be valued, and enforcing the use of Stamps determinable by that valuation.

The Motion was carried, and the Bill read a second time.

POLICE (PRESIDENCY TOWNS AND STRAITS' SETTLEMENTS.)

MR. FORBES moved that the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

EMIGRANT VESSELS.

SIR BARTLE FRERE moved that the Bill "relating to vessels carrying Emigrant Passengers to the British Colonies" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

VACATIONS (CIVIL COURTS.)

MR. SCONCE moved that the Bill "to amend the law relating to Vacations in the Civil Courts within the Presidency of Fort William in Bengal" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

RAILWAYS.

MR FORBES moved that the Council resolve itself into a Committee on the Bill "to amend Act XVIII of 1854 (relating to Railways in India);" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

RECOVERY OF RENTS (BENGAL.)

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.)"

Agreed to.

The Bill passed through Committee after an amendment in Section I, and the Council having resumed its sitting, was reported.

MYSORE GRANT.

The following Order of the Day was then read :—

"Sir Barnes Peacock to move: That the Government of India be requested to lay before this Council, a copy of the account in which the stipends which have from time to time been paid to the descendants of Tippoo Sultan are debited, or such an abstract thereof as will show the total amounts paid and credited in each year, from the year 1799 to the present time.

"Also a copy of any Resolution or Order of Government by which the stipends now payable to such descendants were fixed, and, of any correspondence between the Government of India and the late Honorable Court of Directors, or the Right Honorable the Secretary of State for India, in consequence of which the same was passed.

"And also a copy of any Despatch or Despatches received during the present year from the Right Honorable the Secretary of State for India, by which any sum of money has been ordered to be paid or secured to any of the descendants of the said Tippoo Sultan, and of any document or documents, showing the grounds on which such order was made.

"And further, that the said Government of India be requested to inform this Council whether any sums of money so ordered to be paid to the descendants of Tippoo Sultan, are included in the estimate for the year 1860-61."

THE VICE-PRESIDENT said, in moving for the information specified in this Motion, he thought it right to call the attention of the Council to the circumstances under which he had been induced to make the Motion. On Saturday last, a petition very numerously and respectably signed, was presented to the Council, stating, among other things, that the petitioners were informed that a large sum of money had been ordered by the Secretary of State, to be paid to certain native families. The Honorable Member for Bengal moved that the petition be printed; but before doing so, he asked the Hon rable the President of the Council for information on certain p ints specified in that petition, and amongst other things, whether such an order had been received from the Right Honorable the Secretary of State. The President of the Council however refused to give the information upon the ground that, assuming all the facts which had been mentioned in the petition to be correct, still that neither this Council nor any of its Members ought to ask for such information, as they had no power to interfere in the matter. He (THE Vice-President) thought he was correct in stating that this was the answer of the Honorable the President of the Council on that occasion. Now without entering into the question as to the power of the Secretary of State, with or without the concurrence of the Council of India, to make an order for such a payment, he would assert the right of this Council, or of any Member of it, to ask for such information, and he would like much to know for what reason they were not to expect to receive such information. When the Honorable Member for Bengal asked for the information on Saturday last, the answer which was returned to him was that, if the information on the subject of the estimates were applied

for by the Chamber of Commerce or any other public body, from the Government of India in its Executive capacity, it would be furnished. Now he (The Vice President) held in his hand a letter, dated the 19th of July last, and signed by the Secretary to the Government of India in the Financial Department, which was in reply to one from the British Indian Association, requesting to be supplied with certain information. The answer to that application was as follows :—

"SIR,—I am directed to acknowledge the receipt of your letter, dated the 22nd May last, conveying the request of the Committee of the British Indian Association, to be furnished with the last revised estimate of revenues and charges in India for 1860-61.

In reply I am desired by the Governor-General in Council to state for the information of the Committee of the British Indian Association, that it would be contrary to the practice of any Government, whether in Europe or elsewhere, to furnish official returns on the request of private persons or Associations. Such documents are presented in the first instance for the information of the Legislative bodies of different states, and by them made public.

I am to add that documents similar to the one asked for in your letter under acknowledgment, have some time ago been presented to the Legislative Council and made public.

In conclusion the Governor-General in Council directs me to state that he cannot recognize the right of any private person or Association to ask for such documents, which can be given only through the recognized public channel.

I have, &c.,

(Signed) C. H. LUSHINGTON,
Secretary to the Govt. of India.

COUNCIL CHAMBER,
19th July 1860."

So that when the British Indian Association asked for information, they were told that it was contrary to the practice, not only of this Government, but of all Governments generally, to furnish such information to private individuals or Associations ; and then the letter proceeded to state that such information could be obtained through the Legislative Council, and through them only. But on Saturday last, when a petition, numerously signed, was presented to the Council, stating special grounds why information was required, the Honorable Member for Bengal, instead of moving that the Governor-General in Council be requested to lay the information before this Council, simply asked the Honorable the President of the Council a few questions, and the President of the Council gave the answer to which he had already referred, that this Council was not entitled to ask for such information. He (The Vice President) begged to call the attention of the Council to the fact that we had at present before us, a Bill which proposed to tax all trades up to a certain amount. That Bill would probably very shortly come before the Council for final consideration. When the Income Tax was brought in by the late Financial Member of Council, whose loss we must all deplore, and the Stamp Act and Customs Act were before this Council, the Right Honorable Gentleman gave full estimates of the income and expenditure of the country. What was that for, except to lay before this Council full information upon matters that they were called upon to legislate. The Right Honorable Gentleman then stated the balance anticipated of expenditure over income, and how that balance was to be met. The last published returns showed a deficit of over six millions, after allowing the estimated produce of the Income Tax; and it was stated that that deficit must be met by drafts on the cash balances in the Government Treasuries. Now when this Council would be asked shortly to complete a Bill for imposing a tax on Trades, it was necessary for them to have the same information as before, namely, what would be the deficit after providing this tax, and to know if the cash balances really could meet that deficit. The cash balances in the Government Treasuries in the month of October last, as appeared from a notification of Government published in the Gazette, amounted in round numbers to twelve millions, and the Honorable the President of the Council had told us that, at the commencement of the official year 1861-62, the balances in the Government Trea-

suries would be about the same in amount. At the commencement of the present official year, those balances were sixteen millions, which now were twelve millions, and there was no probability of their being increased, so as to exceed that amount of twelve millions. Last year the balances in the month of October amounted to twelve millions, and they increased between October and the beginning of the official year 1860-61 to sixteen millions. But that increase, as remarked by the Honorable the President of the Council, was produced by payments on account of an open loan. Now it was important to know what was the deficit and what was the amount to be met by taxation, and how much would be drawn from the cash balances? He should like to know how much of the six millions remained to be paid off, and whether the cash balances in April 1861 would amount to twelve millions before or after paying the sum granted to this native family? That was an important question. In all probability the whole of that deficit would not be paid off by the commencement of next year, and therefore, a portion of that deficit would fall on the cash balances after May next. What then would be the amount of the cash balances on the 1st of May? He wanted to know whether that deficit of six millions included half a million to be paid to the Mysore family. Half a million was not a very small sum, and he therefore wished to know whether such a sum of money had been ordered by the Secretary of State to be given away or not, and whether it was included in the estimate of expenditure?

It was said that the Council ought not to ask this question. He saw no reason why they should not. The late Right Honorable Financial Member, when he laid his estimates before the Council, never said, "here are the estimates, but I will not tell you what are included in them, nor will I answer any questions you may choose to put me concerning them." But the Right Honorable Gentleman intended to give us a true estimate of what was the probable expenditure, and how it was proposed to meet it, leaving us as intelligent beings to form our own judgments in legislating for the well being of the country, and as men of judgment to judge for ourselves how far it was necessary to tax the people, and whether it was absolutely necessary to impose an Income Tax on all persons having an income of two hundred Rupees a year and upwards, and to add to that a License Tax on Traders and Artizans. It had been said that we were here simply for the purpose of making laws and regulations. He should like to know what was meant by making laws and regulations. If we had the power to make laws and regulations, were we to make them in the dark? Were we to be considered merely the drafters of laws? Laws are commands; and were we simply to issue them when the Executive Government desired us to do so? Were we not to consider whether what was wanted was necessary or not, or how it was to be carried out? Supposing the original state of affairs in this country, before the constitution of this Council, to have still existed, and the Governor-General with his Council of three or four Members sat deliberating upon a question of taxation. Would they not desire to know what the real deficit was, whether two, or three, or four millions? Now when we were in the same position, had we not a right to ask what the deficit was? Were we to be kept in the dark, or were we not, as intelligent beings, to see not only that the law was properly worded, but whether the law was conducive to the interests and welfare of the people or not, whether it was necessary or not, and whether the money to be raised by the taxes we imposed were to be applied to the actual wants of the country, or spent in voluntary gifts? Suppose we were told that the expected deficit, according to the estimates, was exceeded by half a million, so that, instead of the deficit being 6,273,000 Rs, it was nearly seven millions, and suppose we were asked at the same time to pass the Trades License Bill, should not we ask how that half million additional was caused, and whether the sum of money which had been ordered by the Secretary of State to be paid to the family of Tippoo Sultan, was in the proper exercise of

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the powers of Government? If the half million had not been paid, and if it was not included in the deficit, it ought to be included in the estimate.

MR. BEADON.—And if it had been paid?

THE VICE-PRESIDENT.—That is what we want to know. Then it was said that the payment had been ordered by the Secretary of State, and we had no right to question the proceedings of that authority. But he (The Vice-President) contended that neither the Secretary of State nor the Governor-General had any right to point out to him how he was to legislate. He had a right to exercise his own judgment, and so had every Member of this Council. The Secretary of State could not tell us that he wanted so much money, and that in our passing a law for the purpose, we had no business to ask what the money was required for. The Honorable Member of Government on his left (Mr. Beadon) had asked him—supposing the money had been paid, what we should do? He (The Vice-President) should know how to act when he had the information. He hoped that it would never be considered by any Member of this Council that we were here simply for the purpose of making laws, without enquiring as to whether the laws we made were just and conducive to the interests of the people. If any Member thought that he sat here to make laws without satisfying himself of the necessity for them, and without exercising his own judgment in the matter, he would be merely an instrument to carry out the views of others, and not a Legislator. He (The Vice-President), for one, did not wish to legislate in the dark. Honorable Members might not wish to have the information, but he wished to have it. Supposing he (The Vice-President) did not wish to have the information, and any Honorable Member stood up in his place and said upon his conscience that he wished to have it; although he (The Vice-President) did not require it, he should still feel it his duty, unless strong objections existed, to vote in favor of the Motion. What he proposed simply to do was, not to ask the President of the Council here as President of the Council in his Executive capacity to give him an answer, but to ask the Council to join him in requesting the Government of India to give us the information; and if the Government of India refused to grant our request, we should know how to act hereafter. That was a question for future consideration. He thought he had a right to ask for any information he required, and that all Honorable Members were bound to support him if the information he required was necessary to enable him to discharge his duties conscientiously. Could any man say that we had not a right to ask for such information as he had specified when the Council was called on to tax the people? If any Honorable Member would satisfy him that it was not right for him to ask it, he (The Vice-President) would instantly withdraw his Motion. But he maintained that it was the undoubted right of this Council to ask for such information. Several questions for information had been asked by Members of the Council, and he had never heard any of them objected to before. As an instance, when the late Right Honorable Financial Member brought in the Income Tax Bill, the Honorable Member for the North-Western Provinces asked him for information. He (The Vice-President) held in his hand a Report of the Proceedings of the Council for 21st April 1860, in which he saw stated as follows:—

"Mr. Harington, said, previously to the Council proceeding to the regular business of the day, as sketched forth in the paper which the Honorable President held in his hands, there were two questions which, in reference to what had fallen on different occasions from the right Honorable Gentleman opposite, on the subject of the present and probable deficit for some time to come in the income of this country, as compared with its expenditure, he wished to ask the Right Honorable Gentleman, before the Select Committee on the Income Tax Bill met; and it would perhaps be more convenient for him to put those questions now than at a later hour of the day. The questions were as follows:-

"1st.—How far the expected deficiency of the next year of 6½ millions, it was contemplated would be met by reduction of expenditure?

"2nd.—Seeing that it was proposed to take the Income Tax Bill for the limited period of five years, how it was contemplated, in the interim, to provide ways and means which would enable the Government to dispense with the tax at the expiration of that period?"

The Right Honorable Gentleman did not refuse to answer the questions which the Honorable Member for the North-Western Provinces had thought it necessary to put to him. The information was furnished by the Right Honorable Gentleman at that time. But suppose the Right Honorable Gentleman had refused to answer the questions, he (The Vice-President) would have suggested to the Honorable Member for the North-Western Provinces to have moved for an address to the Government of India, asking them to give the information.

He (The Vice-President) had included four different matters in his question, but if the Council wished, he was quite willing to divide his Motion into four, and to take the votes of the Council on them separately. First of all, he would like to take the sense of the Council on the last question, and that was that the Government of India be requested to inform this Council whether any sums of money ordered to be paid to the descendants of Tippoo Sultan, were included in the estimate for the year 1860-61. The answer might be that there was no order. Then there would be an end to the matter, and the estimate of October 1860 would be a correct estimate. But if such an order did exist, he saw no necessity for making a mystery of it. He could not suppose that the Secretary of State, after ordering the payment of a sum of money, could have any objection to the order being made known. Or if the money had been ordered to be secured, why should not this Council know of it? He (The Vice-President) held that this was a very dangerous precedent. After the financial estimates had been placed before this Council, and the Council asked to increase the revenue to meet the expenditure, should the Secretary of State have the power to send out an order to raise a further sum by adding to the debt of the country, and then should all information be refused to this Council? He (The Vice-President) did not know if a sum of money was ordered to be paid, or some new securities were to be created for the benefit of this family. It was this uncertainty that led him to ask the Government of India for the information. The amount did not make any difference, but it was the principle involved that he regarded. It might be that all this was a mere fiction, and that the Secretary of State had sent out no order at all. But he (The Vice-President) was arguing upon the assumption of the President of the Council that, even if the facts, as stated in the newspapers, were correct, we had no right to ask for the information. But why should there be any mystery in the matter? He could not suppose that the Secretary of State, after ordering a sum to be paid or secured, should wish it to be kept a secret. Then why should it be kept secret? The President of the Council had told us that the information had come from the family themselves. If so, there must have been some communication, or how could the President of the Council suppose that the public had their information from that source? Then why was it not to be communicated to us? But, supposing the order of the Secretary of State was to secure the money, the precedent would be even more dangerous than an order to pay money. The difficulty in paying money in cash would always have some restraint on voluntary gifts, whereas there would be no such restraint if the money were to be paid by future generations, with the increasing addition of interest on the debt, and there would be a great temptation to make such gifts. He (The Vice-President) understood the late Right Honorable Financial Member to have said, when he made his financial statement, that it was not intended to increase the debt of the country, at any rate during the present year, and that the deficit that we had to meet was a certain amount that

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could be met from the cash balances. Upon the faith of that statement, we voted for the Income Tax. Now, surely, we had a right to know wheth r any money was to be secured to this family beyond what appeared in the deficit. By adding to the deficit a sum of money which was not included in the amount, and meeting that by creating some new debt, the estimate beca e an incorrect statement, and we were not acting upon an understanding of the true state of affairs. The amount, as he had already remarked, made no difference, and he therefore proposed to ask for the information contained in the third question. He also wanted the information specified in t e first question. By the absence of the Governor-General, a portion of his duties had devolved upon the Presiden of the Council. There were some rules which prescribed what portion of the business was to be disposed of by the President of the Council, and what portion by the Governor-General. He (The Vice-President) simply asked that the Government of India be requested to furnish the information which was required. If his Motion were carried, he had only to move that a Message be sent to the President of the Council; and if the President of the Council thought that it was not a matter with n his competency by virtue of the rules laid down by the Governor-General, he would refer it to the Governor-General. But in either case it would be acted upon by the Government of India. The information, he supposed, was not contained in a Legislative Despatch from the Secretary of State, because in that case it would, as a matter of course, have been laid before this Council. But if it were not, before the Council proceeded to pass an Act levying a tax, we had an undoubted right to ask for the information. All he asked for now was that Honorable Members would support him in asking the Government, and he called upon all Honorable Members to join him as a legislative body in asking for the information, even though any individual Member might n t personally require it for his own satisfaction.

He also wanted to know by the second question what stipends were payable to the descendants of Tippoo Sultan, and whether there were any orders of Government or any correspondence that had previously settled this matter. A great portion of this part of the information was includ d in the Appendix to the Report of the Select Committee of the House of Commons. But there the account did not commence in 1799, and did not extend beyond 1827. He did not want the Government to take the trouble of furnishing a detailed account; but only such an abstract of the account as could be conveniently prepared.

SIR BARTLE FRERE said that he regretted he could not support the Motion of the Honorable and learned Vice-President, nor could he promise that he would receive any aid from the Executive Government in obtaining that which he looked for, and he (Sir Bartle Frere) sincerely trusted that when he had stated his reasons to the Council, the Honorable and learned Gentleman would see the propriety of withdrawing his Motion.

He (Sir Bartle Frere) would briefly touch on what he might call the technical ground of objection, though it was one which he thought of the highest importance—namely, that the subject was not connected with any Legislative action, and that if any action was required in the matter, such action should be taken by the Executive Government.

What was the case supposed by the Honorable and learned Gentleman? He had heard that a large grant had been made by the Secretary of State in Council to a Native family, without, as the Honorable and learned Gentleman believed, any good reason—that the Executive Government in India had received orders to pay those pensions from the revenues of India, which orders it felt bound to obey. Such, as he (Sir Bartle Frere) understood it, was the case supposed, as he before stated, on the information given by the family itself. The Honorable and learned Gentleman had expressed a doubt on this point. He (Sir Bartle Frere) could only say that the informa-

tion which had become matter of public discussion, was not derived from Government, but as he had every reason to believe from members of the family. This was the case supposed; how far truly or not, he did not feel bound to state But supposing the case to be as stated, who was in fault, and with whom did the remedy lie? Clearly not with that Council nor with that Government, but with the Parliament of England, who passed the law according to the strict letter of which such grants could alone be made; and if any amendment of the law was in the opinion of the Honorable Gentleman required, it was to the Secretary of State and to the Parliament of England he should apply—not to that Council or to the Supreme Government of India. He (Sir Bartle Frere) did not understand the Honorable and learned Gentleman to say, that in the case supposed, he thought they had the power to sit in judgment on such orders or to refuse obedience to them. Indeed he (Sir Bartle Frere) had little doubt, the Honorable and learned Gentleman would say, that no one in India possessed such power. In saying this he (Sir Bartle Frere) simply said—"you have come to the wrong place for information, to the wrong jurisdiction for redress" What would the Honorable and learned Gentleman have said, if, sitting in the Supreme Court, he were applied to on the subject of a case wrongfully decided in the Mofussil? or, if, sitting as an Admiralty Judge, he were assailed by complaints from a suitor in equity, or from a creditor who had been wronged in the Bankruptcy Court? He (Sir Bartle Frere) imagined, however little the Honorable and learned Gentleman might doubt the magnitude of the wrong done, he would tell the applicant, he ought to seek for justice in another Court. This was no new doctrine; it was just the same when Mr. Wilson, gave his estimate, in which all the home charges were entered.

In putting on the paper this Motion, which he (Sir Bartle Frere) might mention he saw for the first time in the daily papers, the Honorable and learned Gentleman did not even condescend to inform them what he meant to do with these papers if he got them. Supposing the Government had received such a Despatch as he (The Vice-President) presumed, and had taken of it the view which he thought right and proper, how could he suppose they should lay all this before the public without receiving the slightest intimation of the use to be made of those papers, or whether they might not be turned into a handle for the most factious opposition to the Government in England? Could he really suppose them so lost to all sense of duty as to lay before the public the materials for an organized attack by that Council on a public functionary in the position of the Secretary of State, who was not even here at hand to defend himself?

The Honorable Gentleman now connected this demand with the License Tax—with what reason, he (Sir Bartle Frere) would show hereafter. Any duty which could arise to take action in connection with such a grant under the circumstances supposed by the Honorable and learned Gentleman, must of necessity devolve on the Supreme Executive Government. If the grant were objectionable, and if the Executive Government had stated the objections to it, all had been done that could be done in India, under the present constitution of the Government as settled by Parliament. If such objections had not been stated, then it was the Supreme Executive Government alone which was to blame; and looking at the Motion in this light, he could regard it as nothing else than a Motion of want of confidence. The Motion said, as plainly as words could speak, to the Executive Government of India—"Here is a duty of remonstrance or refusal, or whatever else you may conceive that duty to be—and that you have neglected, and we require you to state the circumstances under which this neglect of due care of the finances of India has occurred." He (Sir Bartle Frere) did not feel that the Honorable and learned Gentleman had any fair grounds on which to rest such a charge. Whatever might

have occurred with regard to this grant, there was nothing which they wished to deny, or conceal, or which they could be ashamed of when the information was sought by any one who had the right to ask it. The Honorable and learned Gentleman would acquit him of all disrespect when he said that he could not see that that right rested with that Council, and he must, therefore, decline to be any party to placing that Council in what he conceived to be a false position.

Before quitting this branch of the subject, he must make a few remarks in reference to what had fallen from the Honorable and learned Gentleman on the promises and performance of the Government, in furnishing information, such as the Legislative Council might expect to receive, and such as the Executive Government might be reasonably expected to give. The Honorable Gentleman spoke of it as if it had been a practice of the last few months only, and latterly very imperfectly performed. He would beg to refer the Honorable Gentleman to the Report of the Proceedings in that Council of the 12th of March 1859, where he would find that when His Excellency the Governor-General came down to move the first reading of the Customs Bill, he used the following memorable words, which had been often quoted since, and which were well worthy of record, as marking an era in the history of the British Government in India. The Governor-General stated :—

"He offered this explanation, because he wished the Legislative Council fully to understand that, in laying before them a financial measure of some magnitude, a measure which must be distasteful to a large class of the community, the Government had not been driven to that step by any lavishness of expenditure, or any laxity of watch over the revenues at its command."

Now, he (Sir Bartle Frere) appealed to that Council, whether there had been any short-coming on the part of the Government of India in fulfilling the promises thus made? He asserted with confidence, that like every other pledge proceeding from the same quarter, it had been most fully redeemed, and that never at any period was such readiness shown in furnishing the public with all information which could reasonably be expected from Government, as since the date of that speech.

But the Honorable and learned Gentleman attempted to fix on the Government of India a charge of inconsistency between the promise thus made, and subsequently so often repeated, and reiterated by him on last Saturday, and an answer which was given by the Government of India to the British Indian Association in August last, when they were informed that "such documents" as the Association asked for, "were usually presented to the Legislative bodies of the State, and by them communicated to the public." Now, he (Sir Bartle Frere) could see no discrepancy whatever between such an answer as this to the British Indian Association, and the assurances which he gave last Saturday, that the Government of India would be happy to furnish any information in its power which the Chamber of Commerce or any other body representing the mercantile community, might consider to be essential to their mercantile interests, and which could be given without prejudice to the public service. The Chamber of Commerce was a purely commercial body, representing all the great commercial firms of this city, and occupying an entirely different position from the British Indian Association. He (Sir Bartle Frere) had a great respect for that Association, and a sincere sympathy with many of its objects, but as a body, whose aims are chiefly political, it occupied an entirely different position from the Chamber of Commerce. There was hardly any reasonable information which any Government at home would refuse to the London Bankers' Association, but it would be an entirely different question if the same information were sought for by the same firms acting as Members of a Reform or Anti-Corn Law League.

There was one question put by the Honorable and learned Gentleman, on which he (Sir Bartle Frere) was happy to be able to give him information,

which he trusted would be satisfactory. He (the Vice-President) had remarked on the s atement that the cash balances were returned at 16 millions in April 1860, twelve millions in October 1860, and were estimated at twelve millions in April 1861—and he the (Vice-President) asked whether the twelve millions of cash balances in April 1861, were meant to be before paying six millions deficit, or after paying six millions deficit.

In reply, he (S r Bartle Frere) would state that the accounts were made up for the whole official year 1860-61—we had as the cash balance in October last, twelve millions, the expenditure was going on, and the revenue coming in during the months between this and next April, and the Government hoped to close the official year in April, after meeting the deficit of the year, with a cash balance of twelve millions in India.

He need not remind the Honorable and learned Gentleman that these Cash Balances represented the aggregate of balances throughout all the Treasuries in India.

The Honorable and learned Gentleman put a further question, as to whether those amounts included the Mysore grant? For the reasons he (Sir Bartle Frere) had already given, he must decline to enter into any particulars on that subject, but it might satisfy his Honorable and learned friend to know that the Government had written within the last few days, requesting some of the leading Membe s of the mercantile community to confer with the Accountant General or Financial Secretary, and to state to Government what of the returns and accounts periodically rendered to Government, were of real practical importance to the mercantile community, and there would be every disposition on the part of Government to afford them any information they might consider as really valuable.

The Honorable and learned Gentleman, referring to the expression of the willingness on the part of the Government to furnish information, remarked that "Mr. Wilson gave us *true* estimates." He (Sir Bartle Frere) trusted that that there was nothing in the expression "true estimates," which would indicate a belief on the part of the Honorable and learned Gentleman that the returns he had since received had been less true than formerly.

THE VICE-PRESIDENT here interrupted the speaker, and said he disclaimed any such intention.

SIR BARTLE FRERE continued.—The justification put forward by the Honorable and learned Vice-President in asking for these present returns was that the License Bill was now before the Council. But the Honorable and learned Gentleman had forgotten that the License Bill was no new Bill now brought forward by Government for the first time; it was a part of a plan in justification of which Mr. Wilson had proposed his estimates. If those estimates were not satisfactory, why did they not demand from Mr. Wilson further information at the time?

As to the precedent quoted by the Honorable and learned Gentleman for putting such questions, when the Honorable Member for the North-Western Provinces put two questions to Mr. Wilson on the Income Tax, they both related to matters within the competence of the Government of India, and were such as, under the distinction he had drawn, it would be perfectly legitimate to put and only reasonable that the Government of India should answer.

The Honorable and learned Gentleman stated that he could not suppose that the Secretary of State would make such a grant and not wish it to be made public. He (Sir Bartle Frere) could not pretend to say what might be the Secretary of State's wishes on the matter. All he could state was that it did not appear to the Government of India desirable to make such papers public in reply to such questioning in that Council—totally unconnected with Legislative action.

He (Sir Bartle Frere) had been told that Honorable Members held that he had no ground for expressing any apprehension as he did last Saturday, lest the action of the Council in that mat-

ter might injure the Council in the opinion of the English public at home, and afford an argument to those who were unfavorable to the institution of such a Council. He was fully aware that the Council might safely be left to take care of itself. But there was a danger, and one which, viewing it as he did, he felt bound to state distinctly to the Council, that the first result of the action to which the Honorable and learned Gentleman would drive that Council, might be to defer for years any further legal development of their powers, perhaps until some serious convulsion should open the eyes of the English people to their true duty in this matter. Those who had studied, however cursorily, the fluctuations of public opinion in England, must be aware that our dangers lay, not in the desire of any party to remove Indian affairs from the sphere of public criticism and from the control of public opinion, but in the power of several parties who differed widely from each other on all other subjects, to unite in changing the sphere of such criticism and such public opinion from India to England. There was a large and very influential section of honest and sincere Indian reformers, who imagined that there was no hope for India, but in establishing the Indian Government in London under the eye of Parliament They would reduce the Indian Government as much as possible to an assemblage of independent autocracies, and they pointed to the condition of non-Regulation Provinces, to the effects of individual responsibility and energy as shown by some of our Governors of such Provinces, as furnishing the best models we could adopt for our several Governments under the general control of a Secretary of State, responsible to Parliament. He (Sir Bartle Frere) need not say that, beyond joining earnestly in their wishes to improve the condition of India in every possible way, he had little sympathy with this party. He held that above all things it was necessary to govern India in India. But it was this party which had, within these last few months, found most fault with the proceedings of that Council, and who would most assuredly point to such discussions as these as conclusive proofs of the way in which they wasted their time and mistook their proper functions.

He (Sir Bartle Frere) had now briefly stated what he might call the technical grounds of objection to this Motion.

But there were yet stronger, and to his mind more cogent grounds, for objecting to the Motion, on the score of the great public inconvenience of the course on which the Honorable and learned Gentleman would have them to enter. At a time when every branch of the public service was being remodelled, when the greatest exertions were necessary to carry on the current business of the State, and to effect those reductions in expenditure which must be effected if they would avoid general bankruptcy, the Government of India, reduced as it was for the time, in numbers, by the death and ill health of some of its ablest Members, had enough and more than enough to do in attending to its own proper business. It was not always easy under such circumstances to answer for their own short-comings, and he must emphatically protest against being called upon to answer for other authorities over whom the Government of India had no control, and who were in no wise bound by the constitution of the Indian Government, as settled in Parliament, to render to this Government any account of what they did or of their reasons for it. They were told that this movement was intended to assist the Government, and to strengthen their hands in enforcing that economy at home for which they got scant credit in those departments which were under their own control. He did not for a moment doubt the sincerity of this intention, but he really wished that those who tendered it would allow the Executive Government to judge when it wanted direction or help in such a matter. Of this at all events he was convinced, that if week after week they were to pass their time in criticising and defending measures which did not originate in India—for which no Indian branch of the Govern-

ment was responsible, and over which no such branch had any control—not only would legislation stand still, but it would speedily become a matter of utter impossibility to carry on the ordinary duties of Government.

He (Sir Bartle Frere) did not on this occasion make any appeal to the Honorable Gentleman not to do what was commonly called "embarrass the Government." If Government had done wrong—if they had neglected their duties—or betrayed their trust—why, in Heaven's name, let them be embarrassed. He should be the last person to desire to save them from embarrassment; but if, as they had every reason to suppose—as he was given to understand they asserted that they did suppose—that this Government had done its duty, and the matter which they wished to question was one beyond the powers of Government to control, and one in which the Government distinctly stated that it could not with due regard to its duties and responsibilities and to the interests of the Government service, give them the information they sought for—then, he (Sir Bartle Frere) said in the name of common sense, how were their proper duties, whether those of the Executive or the Legislative Council, to be carried on, if every Member of that Council was to consider himself at liberty to put questions and demand papers regarding every act of the home Government which he considered required explanation.

He did not talk of matters distantly connected with the finances of this country, though it would be easy to prove that the conduct of the Ministry at home with regard to Syria or Egypt, or the Italian question, was a matter in which the finances of India were directly concerned. He spoke of expenditure ordered on account of India by the Secretary of State for India. To-day the question was regarding a pension granted to Native Princes—next Saturday it might be on the subject of the contract with the Peninsular and Oriental Company, or the Red Sea Cable, or the Singapore Cable—or any thing else equally unconnected with legislation in India and equally beyond the control of the Government in this country. Where he would ask was any line to be drawn? There was no charge so minute or so utterly beyond the control of this Government to which the reasoning of the Honorable and learned Gentleman would not logically apply.

Finally, he would ask his Honorable and learned friend, if he got the papers he asked for, and if he founded on them the most vigorous action of which that Council was capable, if he got the Executive Government to concur with this Legislative Council in condemning what he thought unjustifiable, what practical result would be likely to follow his actions? They might, it was true, offer to the astonished eyes of Europe the spectacle of another Indian Mutiny more unaccountable than any that had preceded it—the Executive Government, betraying their trusts and conspiring with the Legislative body to defy the authority of the home Government as constituted by Parliament. But he (Sir Bartle Frere) would ask whether this was a course likely to obtain for them the sympathy and aid of the people of England—so conspicuous for their regard for constituted authority and their almost superstitious veneration for all the forms and limitation of authority? Until such forms were changed, and such limitations removed by the legal action of the great powers of the State, he would say that we could expect nothing from the Honorable and learned Gentleman's Motion if successful, but the well merited contempt of the people of England. The non-official community in this very city had already indirectly condemned the action of the Honorable and learned Gentleman, for he saw by a notice in the public papers, that having failed to obtain by their petition to this Council the information they sought for, they had called, through the Sheriff, a public meeting to give expression to their views in the only manner in which they could possibly command the sympathy and respect of the orderly people of England. He could only hope that the Honorable and learned Gentleman would see fit to withdraw his Motion and spare them from the necessity of dividing on it.

Sir Bartle Frere

SIR CHARLES JACKSON said, he must support the Motion of the Vice-President, for he thought that this Council was entitled to full information on all subjects connected with legislation before it. This question was raised in a Debate in August 1859, on a Bill brought in by the Honorable Member for the North-Western Provinces, for the licensing of certain Trades and Professions. He (Sir Charles Jackson) then ventured to ask for accounts of the income and expenditure, and information showing the amount of the deficiency, and was then met, as we were now, with the statement that such enquiries were *ultra vires*, and that he, and those who acted with him, were arrogating to themselves the duties of a House of Commons. Things then came to a dead lock, and after a time Mr. Wilson arrived. He was a Statesman accustomed to deal with men, and knew how to earn their confidence, and he promised the Council full publicity, and gave us all he promised. We were then convinced that great sacrifices were necessary, and these sacrifices were immediately and cheerfully made. But now when we were startled with the rumour—nay more than rumour, for the statement had been made in this Council, and had never been denied by any Member of the Executive Government—a statement then, that a monstrous donation of £4,40,000 had been made to the Mysore Princes—and we ventured to enquire as to the particulars of that gift, we were again met with the old objection of *ultra vires*, and that we were arrogating to ourselves the duties of a House of Commons. This question might be looked at in two aspects. In one, the view of some official minds, every enquiry which was disagreeable was *ultra vires*—indeed some people seemed to think that the Members of the Legislative Council were mere servants of the Government, appointed as Magistrates were to a district, merely to obey the orders of the Government. But the other point of view, which was adopted by the Vice-President and those who thought with him, was that every enquiry was within our competency, which added to our knowledge of the subjects on which we legislated, and of the effect of our legislation. Now what was more important for us to know than the amount of the deficiency that we were to meet, and yet, at this moment, in consequence of the refusal of the President of the Council to give us the information whether this £4,40,000 was included in the deficiency of £6,270,000 or not, we did not know whether the deficiency was £6,270,000, or £6,710,000. Surely this was a legitimate subject of enquiry.

The President in Council told us last Saturday (and the observation had been made in other quarters) that these enquiries were not within our province, and that we were not the House of Commons. We never claimed to be a House of Commons. Without prestige, representing no class of the population of India, and without any power of enforcing any of the enquiries we made, it would be ridiculous, indeed, to compare ourselves with that powerful assembly. But although we were not a House of Commons, he would tell them what we were. We were a small body of independent English gentlemen appointed by an Act of Parliament to legislate for this country, and that duty, he trusted, we should discharge fairly and honestly.

The President in Council said that we were acting *ultra vires*, inasmuch as the proper place for these enquiries was the British Parliament. How could we make such enquiries in Parliament? What means had we of doing so? The Honorable the President contended that we had no right to raise any question on the action of the Secretary of State on our finances, but surely we had a right to enquire what that action was? By whom was the money raised which the Secretary of State appropriated in this way, but by this Council? and who paid the taxes, but the people for whom we legislated? and surely we had a right to enquire if our financial legislation was rendered nugatory by wasteful expenditure. To tell us that we must go to Parliament to have our enquiries answered as to the expenditure of the

Secretary of State, was, in fact, to withdraw from our cognizance all knowledge of a large branch of the public expenditure.

Now we might be wrong in our views on this subject, but if so, we were not to blame for our error. Parliament, when creating our powers, did not think fit to define their limits, and the whole course of this Council had been to assert its independence and its right to full information on all subjects connected with legislation before it, and those rights so asserted had been in fact conceded to it. At an early period of the existence of this Council, he believed in 1855, the home Government of that day sent this Council, who had then the Administrator General's Act before them, an order to pass a specific measure. What course did the learned Vice-President, then a Member of the Executive Government, and Sir Lawrence Peel, our late esteemed Chief Justice, take on that occasion? They told the home Government plainly that they had no right to issue such an order. If this Council had been wrong, the Home Government would have applied to Parliament for an Act confining our duties to those of mere scribes. But the Home Government did nothing of the kind, and on the contrary, from that time to this, the Home Government had never done more than suggest to this Council the propriety of any measure they might wish it to pass.

Assuming then that we were at least independent, let us see whether this Council had not always asserted its right to full information, and whether that right had not in fact been conceded. First of all let me however refer to another passage in the speech of the Right Honorable the Governor-General on the 12th of March 1859, on the Customs Duties Bill, which showed, as well as the passage cited by the Honorable the President in Council, that the Governor-General, for one, took a liberal view of this question. In the opening of that speech he observed:—

"In proceeding to explain to the Legislative Council, the reasons which had induced the Government of India to place this Bill before them, it would be right that he should notice the extent of the pressure which had compelled the Government to resort to this measure, the financial position in which the Government now found itself, the principle which had guided it in framing this measure, and the results which might fairly be expected therefrom."

In the Debate in August 1859, on the Bill introduced by the Honorable Member for the North-Western Provinces for the licensing of certain Trades and Professions, he ventured to object to legislation in the dark, and to call for accounts of income and expenditure. He (Sir Charles Jackson) was then met, as now, with objections, that he was exceeding his powers as a Member of this Legislature. Those Debates must have reached home before Mr. Wilson left England; at all events there was plenty of time for instructions to reach him before he made his financial statement in February 1860, and yet that statement manifested anything but hostility to our claim for information. He would just read what the Right Honorable Gentleman said on that occasion:—

"The Government desires to exercise no reserve. We think that our safest course—for rely upon it, if in matters involving the credit of a State, there is a well founded impression that something is held back, that the whole truth is not known, that the public may be exposed to a disagreeable surprise—it is the Government itself that suffers most from such a state of uncertainty. The money market understands how to discount uncertainties and contingencies. We consider, therefore, that the greatest frankness is not only the line of our duty, as it is of our inclination, but that it is our best policy: we are of opinion also, that under present circumstances especially we are bound to be frank, when we are about to appeal to you to aid us in our efforts to retrieve the position in which we now stand. If we call upon the public to bear new burdens, and to make new sacrifices, however slight, we feel that we are at least bound to explain fully their necessity. And we are confident that, if we can enlist public opinion in our favor at all, it is by pursuing such a course. Sir, it is true we have no representative assembly to satisfy, and it would be only idle to speculate upon the time when India might have such institutions; but, Sir, we have a public opinion, an enlightened public opinion, both Native and European, and above all we have a Free Press and free discussion; and we are of opinion that nothing

but good can be derived from those useful—I would say necessary elements of a prosperous social structure, by frankness on our part. It is by such a course that we believe we can best perform our duty to this Council, and by which we can best enlist the sympathies and aid of the public in the heavy task which for the public benefit of India we are prepared to undertake, and in the success of which we have the utmost confidence, if we have only that fair share of support which we trust our proposals will command."

Then again the learned Vice-President had referred to certain questions put at a subsequent period by the Honorable Member for the North-Western Provinces, calling upon the late Right Honorable Financial Member for information relating to the reduction of expenditure. The information thus called for was readily afforded by the Right Honorable Gentleman. He (Sir Charles Jackson) had just been told that those questions had been put at the express desire of the Right Honorable Gentleman himself, but that made no difference. It only showed the Right Honorable Gentleman's wish that full information as to expenditure should be laid before the Legislative Council.

He thought he had shown enough to prove that our right to full information on all matters connected with legislation had been conceded. In fact, the Act of Parliament having failed to define our rights on the subject, this must be the only principle which could be applied to us. He did not mean to say that a Member might bring in any Bill, founded on some crotchet of his own, and then require, Government to give every information connected with his Bill; but that was not the case before us, for it was the Government that now called on us to pass tax Bills to meet the present deficiencies. If they did this, they must afford us the means of intelligently exercising our Legislative duties, and this could only be done when we knew the purposes to which the proceeds of such taxation were to be applied.

But he thought we were also entitled to express our opinion freely on all subjects connected with legislation. We had, for instance, a right to complain if we found our legislation interfered with by the action of some extrinsic body or person. Now suppose the Governor-General in Council—of course he was putting a supposititious case, for he believed the Executive Government to be incapable of such an act—but suppose the Governor-General in Council to issue an order suspending the Income Tax, and promulgating a new law. Should we not be entitled to complain? Would it not be within our competency to record a Resolution on our Proceedings, condemning that course. Or let us suppose another case more analogous to the present. Suppose the Governor-General in Council were to give away five millions of the public revenue to some Native Prince. Surely we should be entitled to complain, and say it was useless to come to us for legislation if the money raised was squandered in that way? And so in the present case we should be entitled to complain if we found it to be true that the Secretary of State had given away £4,40,000 of the public revenues for these Mysore Princes. At present we had no official information before us, and he should, of course, reserve his opinion on the merits of this grant till he saw all the papers. What he wanted was to get at the facts, to see whether there was a shadow of liability on our part to pay this money, or what was the pretence for such a monstrous donation.

Now, assuming that this was a gift—and we had a right to assume this for the present purpose, as the Government had not yet thought fit to deny it—then there were two grounds on which he thought the Council might legitimately complain. *First*, this Council might well complain of such a gift at such a time as this, when we were devising, hitherto with small success, how to raise funds sufficient to equalize the income and expenditure. We were surely entitled to complain if the Home Government, without consultation with the Governor-General, had granted away nearly half of the money we got by our Income Tax in this most extraordinary donation. If we did not complain, he felt

sure the other Native Princes would proceed to England, and return with orders on our Indian Exchequer—no doubt they were all now turning their faces homewards—ignoring the Governor-General, who had always hitherto been considered as the fountain of honor and wealth to the native population. But, *secondly*, we had a right to call the attention of the Parliament and the whole community to these extraordinary powers which were vested in the Secretary of State in Council. We found that the Secretary of State in Council of his own mere motion, without consultation with the Governor-General, might vote away any portion of the public revenues. The Honorable the President in Council had said, this Council had no right to question the legality of the acts of the Secretary of State. It was not his intention to do so, but he might surely express an opinion that some check ought to be devised by Parliament to restrain these awful powers. He said awful powers, for what was there to prevent the Secretary of State from sending us further orders for a million or two in 1861, and another million in 1862? What check should be imposed on these powers was quite another question, into which it was not necessary to enter, but one check was obvious, namely the concurrence of the Governor-General in Council to such grants. He felt confident that, if they had been consulted in the present case, this donation would never have been made. As to the check of Parliament, they all knew what that meant. If the public prints, and our other sources of information, did not greatly mislead, the very utterance of the word "India" operated like the clang of a bell, calling the Members to their dinner. On these two grounds he trusted that, when we got the papers, we should be able to frame some Resolutions, expressing the sense of this Council on this extraordinary grant.

The Honorable the President in Council had treated this Motion as if it were a vote of want of confidence. He could not imagine on what ground he could so consider it. He assured that Honorable Gentleman, that he for one disclaimed any intention of reflecting on the Executive Government. He firmly believed that the Executive Government had done their duty in this matter, and that if it had been in their power to prevent it, this donation would never have been granted. The enquiries we now made were all devoted to the action of the Secretary of State in Council in this matter, and to the conduct of the Secretary of State in Council only.

He thought the Home Government should bear in mind that the present system of taxation no longer affected the native population only, but laid its heavy hand on European British subjects. In Great Britain taxation and representation went hand in hand, and although it would be impossible in the present state of India to introduce anything of the kind here—though it would be, as Mr. Wilson observed, an idle dream to speculate after what length of time India would be fit for representative institutions—yet still he thought the Home Government might adopt some constitutional forms, and some checks on wasteful expenditure. If they did not, there would be much discontent among the European tax-payers, for you could not put your new wine into the old bottles, you could not compress your new subjects of taxation under your old modes of Government. Our fellow countrymen in this country had all the characteristics of their countrymen at home, and would never quietly submit to any system of taxation, the necessity for which was not explained, or to a system of expenditure which was not shown to be proper, and not wasteful.

MR. BEADON said, he did not altogether regret that this Motion had been made by the Honorable the Vice-President, though he considered it his duty to oppose it. He did not regret it, because he thought that the proceedings of the Council this day, however they might result, would tend to impress on Her Majesty's Government the necessity for imposing some further check on the expenditure of Indian taxes in England, and that they would be a step towards the solution of the doubts which prevailed as to the

functions of this Council, and as to its relation to the Executive Government of India.

The Honorable and learned Judge who spoke last, had truly said that this Council was not the House of Commons, and that it did not exercise or desire to exercise over the Executive Government of India the kind of control that was exercised by the House of Commons over Her Majesty's Government at home. He had truly said that they were a body of independent English gentlemen, and that they had a right, before they legislated, to all information which was necessary to enable them to legislate in an intelligent manner. The Honorable and learned Gentleman had also remarked that there were some who regarded the Legislative Members of the Council as if they were paid Magistrates in the Mofussil, bound to obey the behests of Government without question. From that category the Honorable and learned Gentleman had specifically excepted the Honorable the President of the Governor-General's Council, and therefore it seemed necessary that he (Mr. Beadon) as the only other Member of Government now there, should for himself distinctly disclaim any such view.

SIR CHARLES JACKSON said, his remarks did not at all apply to the Honorable Member of Government.

MR. BEADON resumed.—He was glad to hear that.

He fully concurred in all that the Honorable and learned Judge had said, as to the perfect independence of the Members and their right to demand from the Executive Government all the information necessary for the purposes of intelligent legislation: and it was because he thought that the information now sought was not necessary for that purpose, that he could not vote for asking for it.

The Honorable and learned Vice-President had well said that, in dealing with the question before the Council, it was necessary to bear carefully in mind the way in which it arose. It had not arisen in immediate connexion with any legislative measure under the consideration of the Council, but it had arisen directly from the petition which was presented to the Council last Saturday, and which had been printed, and was now in the hands of Honorable Members. That petition, coming from a large and highly respectable body of the inhabitants and tax payers of Calcutta, after charging the Government of India with not fulfilling its promise of giving the public full and clear details of the public expenditure, full estimates in anticipation for the ensuing year, and periodical statements of the cash balances, and after alluding to certain heads of expenditure on which they desired information, asked this Council

"to take such measures as may ensure the immediate fulfilment of the unconditional promises of the Government, by laying on the table of your Honorable Council such full and detailed statements, returns, and estimates as shall give your Petitioners, as payers of Indian taxes, the same full information and power of public scrutiny, as are enjoyed by the tax-payers of England, in accordance with the promises above alluded to."

Now, he would not further advert to the charge made against the Government of India, than to say that it was completely refuted by the Honorable the President of the Council of the Governor-General of India, in his speech on the Motion that the petition be printed. But apart from that, there could be no question that the object of the petition was to induce this Council to put a pressure on the Government of India, in order that it might be compelled as it were to produce and make public information which could not be extracted from it by any other means.

Now, he would state distinctly, notwithstanding the allusion that had been made to the answer given by the Financial Secretary to the British Indian Association, that if the body of gentlemen who signed that petition, or if the Chamber of Commerce, had applied to the proper department of the Government of India for the information which was therein asked for, they would have received it as fully as it was given in this Council by the Honorable the President. They would have received all the information which

the Government could give, and felt itself at liberty to give, and nothing would have been kept back, but that which his Honorable colleague felt himself compelled to withhold there. Speaking for himself, he desired to say that he recognised most fully the importance of giving the public complete information as to the revenues and expenditure of the Government, and as to all that concerned its finances, or could in any way affect the money market and the operations of commerce. He could therefore safely say that as far as he was concerned, and he knew that in this respect he could answer for his Honorable colleague, the requests for information contained in the petition if made to the Government of India would have been complied with, so far as it was in the power of that Government to comply with them, and that where information was not given, the reasons for withholding it would have been explained.

But supposing it to have been otherwise. Supposing the petitioners to have been unsuccessful in their application to the Government for the information they asked for, or for any satisfactory explanation of the reasons for withholding it. Was it right, he would ask, that they should come to this Council to put a pressure on the Government of India? Was it right that they should endeavor to make this Council an instrument for extorting from the Government of India information or explanation which the Government of India had thought it expedient to decline? Was it right that they should place this Council in a position of antagonism as it were to the Executive Government of the country? Was it right that the Council should accept this position? To him it appeared that these questions must be answered in the negative, and if so, how much more when the Petitioners came to that Council to ask its interposition in obtaining information which they had omitted to seek by more direct means. He need not say how great would be the public inconvenience and embarrassment if such were the recognized relative position of the Legislature and Executive in a country like India governed by an alien race, and by the prestige of the despotic power of Her Majesty's Viceroy.

He begged they would consider what the constitution of that Council was. It was very simple and was defined in Section XXII of the Act of Parliament, passed in 1853, which declared that for the better exercise of the powers of making laws and regulations now vested in the Governor-General in Council, certain persons should, in addition to and together with the Council then existing, be Members of the said Government, for and in relation to the exercise of all such powers of legislation, and that such persons should not be entitled to sit or vote in the said Council, except at meetings for making laws and regulations.

This Council therefore was not a body separate from the Governor-General in Council, but it was the Governor-General in Council, or in his absence the Vice-President in Council, and these meetings were meetings of the Council of India for making laws and regulations. The Governor-General in Council possessed the very same powers of making laws and regulations as he possessed previous to 1853, and no others: and this Council was in no legal respect different from what it was when it consisted only of the Governor-General and three Ordinary Members sitting and voting only at meetings for making laws and regulations. It seemed therefore to him (Mr. Beadon) quite unconstitutional and beyond the intentions of Parliament that that Council should take any step which might have the appearance of sitting in appeal against the act of the Government of India, or to encourage the public in supposing that an appeal lay from the Governor-General in Council in one department to the Governor General in Council in another.

He now came to the subject of the Honorable the Vice-President's Motion which he felt bound to oppose, not only on the general grounds he had already stated, but for special reasons. The notoriety of the proceeding of which it was proposed to call for the papers,

gave him liberty to speak without much delicacy about it. Anybody who took the trouble to go to Russapugla, or who met Prince Gholam Mahomed in his morning ride, could have from him a full and accurate account of all that had been done for the Mysore family by Her Majesty's Government, and could form his own opinion. Why, by the very Steamer which brought out the last Despatch from home relating to the Mysore Princes, came Prince Gholam Mahomed himself with a letter in his pocket from the Secretary of State, telling him all that Her Majesty's Government had done for the family, and he and the other Members of the family made no secret of it. This he had heard out of doors, and he confessed that from what he heard there seemed to be no difference of opinion on the subject. His own view of the matter was recorded on the proceedings of the Government of India, and as it might be published some day or other in a blue book, he had better not say what it was. But of course notoriety of this kind was a very different thing from the formal publicity involved in the production of papers on which an act of the Government could be made the subject of public official discussion and animadversion. Not that he would have any objection on this score to produce any papers involving the decision of the Government of India, whose Members were present to defend themselves, and the Government of which they were the Members. But he felt the strongest objection to the production of papers for the purpose of calling in question an act of the Secretary of State, who was not here to explain his act, or to show cause why the papers should not be produced. He did not think it would be fair thus to arraign a public functionary before a tribunal to which he was certainly not responsible, and before which he could not appear, or that it would be wise to anticipate the action of Parliament in the matter, and, as he thought it could not be affirmed with reason that an inspection of those papers could be really necessary for any purpose of legislation, he was of opinion that they ought not to be asked for.

He had said before that the legal constitution and powers of that Council did not in any respect differ from those of the Governor-General in Council before the passing of the Act of 1853, but there was one important particular, in which the constitution of this Council practically, though not legally, differed materially from that of the Governor-General in Council when making laws and regulations under the former regime. By no law, but by a spontaneous act of the Governor-General in Council, the proceedings of this Council had been made public, and consequently every document officially communicated to this Council was public also. This it must be admitted was a very important difference. The Honorable the Vice-President would bear him out in saying that when he filled the office of Legislative Member of Council, and had not by law a vote or a seat in the Council, except at meetings for making laws and regulations, he had no difficulty in obtaining access to all papers of whatever nature that came before the Government, however secret and confidential they might be, and papers were now freely placed within reach of the Legislative Members who needed them for their own information.

THE VICE-PRESIDENT said that, if he were furnished with a copy of the papers asked for, he would withdraw his Motion.

MR. BEADON said that he could not promise that, but he affirmed generally as a fact that papers were now freely placed in the hands of Honorable Members who required them But before papers could be communicated to this Council officially, it had now to be considered whether they were such as could be properly placed before the public, and if they were not of that character, neither could they for the same reason be communicated to the Council.

He was free to admit that, when Parliament abolished the Court of Directors of the East India Company as a governing body, it failed altogether to

provide in the place of that body any effectual check upon the expenditure of the Indian taxes in England. The Council of India, a mere appendage to the Secretary of State, was no substitute for the independent Court of Directors as a check upon extravagance, especially in Military expenditure, and what could Parliament do when the very men who were best fitted to give information on Indian subjects, and were for that reason appointed to the Council of India, were excluded from the House of Commons? Without touching on the great question, whether India should be governed in England as a dependency or in India as a colony, he would say without fear of contradiction that some additional control on the administration of the public finances of India was absolutely necessary, but the nature of it must be determined by Parliament. Meanwhile the Council might be assured that the Government of India had done its duty in this matter, and he did not think that any such control ought to be attempted by this Council, whose function was strictly limited by Act of Parliament to the making of laws and regulations.

MR. ERSKINE said, he had come down to the Council that morning with the intention of offering some remarks on more than one subject closely connected with this Motion. But the discussion had already covered such an extent of ground, and branched off in so many different directions, that he believed he should best meet the convenience of the Council and answer his own purpose if he confined himself, in the very few observations he should now make, strictly to the two points by which his vote must be decided, if this Motion were pressed to a division; and which seemed indeed to contain the gist and essence of the whole matter, namely, whether the request which the Honorable and learned Vice-President proposed to make was a legitimate and reasonable request—and if it were, whether the objection urged against a compliance with it seemed sufficient. He was obliged to say, with reference to the former point, that he was one of those who believed that a public duty lay on every Member of that Council to satisfy his own mind by all means in his power, that the proceeds of taxes which he was instrumental in imposing, were not largely misapplied either in England or in India; and, as he believed that this was their duty, it seemed to him that, when any Member of the Council proposed to ask for information from Government in this way *bonâ fide* for the purpose of satisfying his own mind on a public matter like this, his request should not be refused, except on the ground that the information asked for was such that it could not be produced without real injury to the public interests. For these reasons he could not come to the conclusion that the proposal of the Honorable and learned Vice-President was illegitimate or unreasonable; and therefore, although he always differed with regret from some other Honorable Members of the Council, and especially could not differ without great reluctance from his Honorable friend the President in Council, as would readily be believed by his Honorable friend whose judgment he always respected so much, still he should be obliged in this instance to give this Motion his support in as far as it was not objected to on the ground that the information could not be produced without injury to the public interests.

MR. HARINGTON said, he did not know that he could with advantage protract this debate by taking part in it, and, after what had fallen from the Honorable Members who had already spoken, he should have been content to have recorded a silent vote upon the Motion before the Council, but a very forcible appeal had been made to them which, looking to the vote which he intended to give, he did not think that it would be respectful on his part towards the Honorable and learned Vice-President who had made that appeal, to pass over without observation, and there had been allusions made to his (Mr Harington's) conduct on former occasions which seemed to require some notice from him. He regretted very much that

the Honorable and learned Judge on his right (Sir Charles Jackson) had introduced into this important debate observations which could not, he thought, be regarded as otherwise than of a personal nature. Certain questions which he (Mr. Harington) had put to their late Right Honorable colleague, Mr. Wilson, whose death, as justly remarked by the Honorable and learned Vice-President, they all deeply deplored, had been referred to in support of the present Motion. The questions alluded to were asked when the Bill for imposing an Income Tax was before the Council. The Honorable and learned Judge on his right had told them that he had just been given to understand that those questions were put at Mr. Wilson's own request. He (Mr. Harington) did not know from whom the Honorable and learned Judge had obtained this information. He (Mr. Harington) had not furnished him with it. The questions were put and answered. Had Mr. Wilson refused to answer the questions on the ground that the Executive Government did not consider it proper to furnish the information required, and had he (Mr. Harington) persisted, notwithstanding, in asking for that information, and having put the question to the vote succeeded in carrying a Motion similar to that which was now before the Council, he admitted that the case would have served as a precedent on the present occasion, but as the case stood, it was not in point, and furnished no precedent on which they could rely at this time. The information asked for had been at once given, and there the matter ended. The Honorable and learned Judge had referred to what had fallen from him (Mr. Harington) in the course of one of the Debates which had taken place on the Bill brought by him last year for licensing Trades and Professions. In that Debate, he (Mr. Harington) had certainly taken upon himself to remind the Council that they were not like the House of Commons, whose duty it was to regulate and control the public expenditure, as well as to provide the money required for the same by means of legislation. He contended that this Council, under its constitution, had no power to interfere, either directly or indirectly, with the administration of the public revenues of the country, and he remarked that it was the Governor-General of India in Council in his executive capacity, and not the Governor-General of India in Council in his legislative capacity, who was responsible for the due administration of the Indian Finances. He adhered to the opinion which he then expressed, and the only part of what fell from him in the debate referred to which he had had occasion to regret, was the part in which he stated incidentally what was construed into a charge against some Honorable Members of seeking popular applause in the observations which they had been led to make upon the Bill brought in by him, and he regretted this the more, because the charge was considered to extend to the Honorable and learned Vice-President, to whom the remark could not possibly have been intended to apply. He (Mr. Harington) had been induced to express himself as he did in the debate to which he was alluding, because it certainly appeared to him that the Council were disposed to assume duties and functions which did not properly belong to them, and what had fallen from the Honorable and learned Judge on his right to-day seemed fully to warrant the inferences drawn by him (Mr. Harington) on the former occasion. The Honorable and learned Judge on the supposition that a donation, such as had been stated, had been really made to the parties named, had styled it a monstrous donation, and he had gone on to declare that it might be the duty of this Council to record a Resolution, having for its object to call the attention of Parliament and the British public to the matter, in order that some check might be imposed on the Secretary of State for India, and that some check might be put on this disgraceful expenditure.

SIR CHARLES JACKSON here interrupted the speaker and said, that he did not use the word "disgraceful."

MR HARINGTON remarked that he had taken the Honorable and learned Judge's words down at the time,

and he thought that he had expressed himself as stated.

SIR CHARLES JACKSON said that the word used by him was "wasteful" not "disgraceful."

MR. HARINGTON begged the Honorable and learned Judge's pardon, and said he understood him to have employed the word "disgraceful," and he had consequently put down that word in his notes.

MR. HARINGTON resumed. He contended that if the duty of that Council had been correctly stated by the Honorable and learned Judge, it would necessarily involve a direct interference with the public expenditure, but he maintained that this Council, whose duties were purely legislative—as clearly pointed out in the Acts which had been quoted by the Honorable Member of Council (Mr. Beadon)—had no authority to exercise any such interference, and it certainly appeared to him on the present, as it did on the former occasion, that if they did not take care, they would be going beyond their legitimate functions. The Honorable and learned Judge (Sir Charles Jackson) had mentioned, in not very complimentary language, that after the Debate on the Bill brought in by him (Mr. Harington) for licensing Trades and Professions, they heard no more of that Bill. On that part of the Honorable and learned Judge's speech, all that he (Mr. Harington) would say was that in a few days the Honorable and learned Judge would probably be called upon to vote for the third reading of the Bill alluded to by him in a modified form. The Honorable and learned Judge was not present when the Bill now before the Council was introduced. But if he would refer to it, he would find that it was based on precisely the same principle on which the Bill brought in by him (Mr. Harington) was based, though one point of difference between the two Bills was that the present Bill would, he feared, produce a very much less amount of revenue than his Bill, had it become law, would have yielded.

He would pass on to the appeal which had been made to them from the Chair. The Honorable and learned Vice-President had asked them to support his Motion upon this amongst other grounds that the papers to which that Motion referred, were required by him to enable him properly to perform his duties as a Member of that Council, and he thought that, even although other Honorable Members might not want the papers for the same purpose, it was only right that they should assist him in obtaining them for his own use. He (Mr. Harington) would be very glad indeed if, consistently with what he regarded to be his duty on this occasion, he could respond to the Honorable and learned Vice-President's appeal, and give to his Motion the support for which he had asked. This was what his inclination would naturally prompt him to do. The high position which the Honorable and learned Vice-President occupied in that Council and in another place; the estimation in which he was held by all classes; the assistance they had derived from his labors, and the valuable aid which he was at all times so ready to afford to them individually and collectively in the discharge of their important duties, must make every Honorable Member most anxious to meet the wishes of the Honorable and learned Vice-President on this occasion as well as on all similar occasions, and for his own part, he would say that it was very painful to him to be obliged to vote against the Honorable and learned Gentleman's Motion, but after what had been stated by the Honorable the President of the Council of India as his reasons for considering that the papers asked for ought not to be produced at the present time, he felt that he had no alternative. He gathered from some observations which had been made by the Honorable the President of the Council of India that a Despatch had been received from England relative to the grant out of which this discussion had arisen, but that a representation or remonstrance had been made on the subject. If he were right in the inference which he had drawn from what had fallen from the Honorable the President of the Council of

India as to a reference having been made home, it was quite possible that the grant so generally objected to, assuming it to have taken place, might be reconsidered, and in the meantime, as the matter must be looked upon as *sub judice*, he thought there was the less necessity for their calling for any papers or information in connection with it. Furthermore, he observed that a public meeting was to be held next week for the purpose of considering the subject, and determining what ulterior steps should be taken to obtain a reconsideration of the whole case. This was a perfectly legitimate and proper course of proceeding, and it would probably result in a petition to Parliament, where the matter would be fully and properly discussed, and such decision come to in regard to it as might appear to be called for by the circumstances of the case. This seemed to him to furnish an additional reason against the adopting of the Motion which had been proposed to them. He had intended to have gone more fully into the question of the duties and powers of this Council, and as to its competency to call upon the Executive Government to produce any papers which it might think should be communicated to it. But for the reasons stated by the Honorable Member for Bombay, he thought it would be better that he should follow the example of that Honorable Member, and abstain from any further discussion of the subject at this time.

SIR BARTLE FRERE asked the permission of the Council to say a few words in explanation, with particular reference to what had fallen from his Honorable and learned friend opposite (Sir Charles Jackson). He (Sir Bartle Frere) had endeavored to draw this distinction that, with regard to its own acts and the acts of those under its own control, the Government of India was most anxious to afford this Council every information possible, and they had always afforded it when asked at proper times by those who were entitled to demand it. But with respect to matters beyond their jurisdiction, they must decline admitting any liability to be cross-questioned, or to be required to give any information whatever He had endeavored to mark the distinction as broadly as possible.

Referring to what he had said about this Motion being in fact a vote of want of confidence in the Government, he felt much obliged to Honorable Members for the manner in which they had spoken of the Government. But he could not help thinking that his argument had not been fairly met. He had said that the terms of the Motion were equivalent to saying that this Council did not believe that the Government had done their duty in this matter. If it were not so, why were they not told the object in asking for this information? But the Honorable and learned Vice-President had not mentioned the course which he intended to follow if the information he required were supplied. As to what that course would be, except from what might be gathered from the words which fell from the Honorable and learned Judge opposite (Sir Charles Jackson), we had not the slightest intimation.

With regard to the desirableness of knowing what became of every shilling raised in India, he (Sir Bartle Frere) most cordially concurred. But as to that part of the expenditure which took place in England, the Government of India had no control. This was no new discovery; this limitation of the duties and responsibilities of the Government had long existed, and had been sanctioned by Parliament, and it appeared to him (Sir Bartle Frere) that the matter was one which we could not, as a legislative body, discuss. Sooner or later, if any money was paid to the Mysore family or any one else, it must appear in the Indian accounts, and then it appeared to him these questions would be perfectly legitimate. Till then he thought that the case put by the Honorable and learned Judge opposite, had not occurred, and he would only repeat that he felt confident, when the papers were produced, it would be seen that every thing

which the Government of India could do legitimately, it had done.

With reference to what had fallen from the Honorable Member for Bombay, he (Sir Bartle Frere) could only repeat that the production of the papers was in the opinion of the Government of India incompatible with the duty of the Government, and that the greatest possible inconvenience must arise, if the Legislative Council forced, or attempted to force, from the Government, the production of these papers. He trusted that what he had said would satisfy the Honorable Member

MR. SCONCE said that perhaps he might well avoid on this occasion stating to the Council any remarks of his own, in justifying the vote which he should give in favor of the Motion of the Honorable and learned Vice-President. The ball grew as it rolled. In the course of the Debate many arguments were brought forward, which it might be desirable to notice, but he rose much less with the purpose to trouble the Council with his own opinions, than if possible to relieve the President in Council of some apprehension which he entertained as to the share he (Mr. Sconce) took in this matter. The Honorable Gentleman in the first place had observed that he looked upon this Motion as a vote of want of confidence in the Government. Now he must deprecate any such view of the object of this discussion. He entertained feelings of the utmost respect for the Government of India. In dealing with such questions as that now brought before us, he believed that the conduct of the Government of India was at all times regulated by the highest integrity, and that no Government in the world could in that respect better claim the support and confidence of the people, and he was well assured that at no past time had the Government of India been administered with more integrity or more earnest straining after justice, than at the present moment. He hoped, therefore, that, so far as he was concerned, he should not be supposed to be a party to the passing of a vote of want of confidence in the Government.

Sir Bartle Frere

There was another matter however. The Honorable the President of the Council had said, as he (Mr. Sconce) understood, that this Motion was calculated to harass a weak Government. It might be that the Government was weak in numbers. They had to lament the death of one Member, and the absence by sickness of another. If in this sense we were to assent that the Government was weak, we knew that they were not weak in power, and however much he might and did regret that the bringing forward of this discussion should, in any degree, occasion anxiety to the Members of the Executive Government, it seemed to him that the extreme importance of the subject required them not to shrink from the conclusion which the motion of the Honorable and learned Vice-President invited them to come to. He had already stated that a variety of topics had been pressed upon us, and he trusted that the Council would pardon him for saying that he hardly understood the point upon which he was called upon to vote. The President in Council had said that a principle was at stake, and he (Mr. Sconce) begged to ask him what that principle was?

SIR BARTLE FRERE explained that the principle at stake was, whether we should be called upon to produce papers in respect to measures over which we had no possible control, which related to the acts of authorities not under our jurisdiction, and which had no bearing on any matter before the Council in its legislative capacity.

MR. SCONCE resumed. He would remind the Council that the explanation of the principle just afforded by the Honorable the President in Council, did not meet the four questions embraced in the Motion before the Council. It might apply to the production of the last Despatch from the Secretary of State, but it could not apply to the production of the Resolutions of Government, by which the stipends of the Mysore family had been hitherto regulated, nor could it apply to an account of the stipends paid to that family since 1799, nor indeed to

the fourth point in the series of Motions now submitted to the Council. But again he must say, turning to the speech of the Honorable Member on his right (Mr. Beadon), that the principle involved in the opposition o t'e Motion of the Honorable and learned Vice-Preside w s i dist nguishable. He understood the Honorabl Gentleman to say that he would tell us what he knew of the mat er from inform - tion he had learned out of doors. The excellent head of the Mysore family, we were told, had brought with him from England letters that contained all the information on the subject of the orders of the Right Hono able the Secretary of State that was to be found in the Despatch addressed to the Government of India, and we seemed to be invited to go to the Prince at Russapugla, and ask from him the information which the Government declined to give us. What principle could be preserved in pursuing thi course? Publication by the hands of Prince Gholam Mahomed was he d to be admissible, and surely the Government of India could de ive no satisfaction from knowing that the Members of this Council acquir d the information demanded by this Moti n from Russapugla, and not from the Gover ment. Would the Home Government be less embarrassed, if the Council adopted the course sugge ted? There was no pretence of secrecy. The papers were procurable, and yet from the over-fastidiousness of the Government of India, the reque t of th s Council addr ssed to the G vernment for the same papers was to be rejected.

SIR BARTLE FRERE sai', the question of embarrassment did not enter at all into this matter. The production of these papers would occasion no embarrassment whatever to the Secretary of State or to the G vernment here.

MR. SCONCE said, the matter had been put to them hypothetically by the Honorable the President of the Council. He unde stood h m to say tha if the Government of India had remonstrated against the orders of the Secretary of State, and the subject of the grant to the Mysore Prince were still pending, it might be inconvenient to produce the papers. But no positive assurance had been given to them upon this point. Th re might be little unwillingness on the part of the Council to orego their demand for information if the matter w re still pending. But the Honorable the President in Council declined to hold out any hope that the case was still pe ding; and, as he understood, they were not asked to reject this Motion upon the plea hat the matter was not decided.

SIR BARTLE FRERE begged to state for the third time that he had given no information whatever on the subject, and he did not wish any Honorable Member to misunderstand him.

MR. SCONCE said, we could not then be expe ted to proceed on grounds of mere sup. osition, when positive statements were withheld. He was not willing to occupy the time of the Council long, but there was something that was said by the Honorable Member of Government on his right (Mr. Beadon) that by the entertainment of petitions, such as the petition presented last Saturday, improper pressure might be put upon the Government of India, and that a mischievous habit might be established if the Members of t'e Council brought forward the questions suggested in that petition. Now h must say simply for himself, that the questions he had put last Saturday, referred to matters upon which he personally felt the necessity of explic t information, and it was unwor hy of the indep ndence and intelligence of the Members of this Council to suppose th t t ey would injudiciously lend th mselves to any course suggested out of doors for their adoption. It was said that the authority of the Legislative Council was limited. It might be so, but he would ask, was not the Executive Government under some limitation also? The Honorable M mber near him (Mr. Beadon) had spoken of the despotic powers of the Viceroy, and he must say t at he entirely differed from th s description of

the authority of the Executive Government. The authority of the Viceroy, as of every man, in and out of office, was exercised under the law. By despotism, did the Honorable Gentleman mean what was commonly understood by absolute power or arbitrary will? [Mr. Beadon—No.] No, then in discarding arbitrary will, the power exercised must be referrible to some rule or law, and that law he took to be the law of truth and justice. If you admit that your power was limited by reason, justice, and truth, you were bound to verify the authority you exercised by disclosing, as occasion called for it, the course and ground of your proceedings. It was not simply that you disclaim the exercise of your arbitrary will, but you profess that your conduct is regulated by principles which the common sentiments of mankind universally appreciate and approve. How then can you fail to bring your proceedings to this test?

MR. FORBES said that, the Honorable the President of the Council having now declared that the greatest inconvenience and embarrassment to the public interests would result from the establishment of such a precedent as would be made by the grant of the papers now moved for, he (Mr. Forbes) would venture to express a hope that the present Motion would be withdrawn; but as he had no desire to shrink from the responsibilities of his position as a Member of this Council, and to avoid a declaration of his views upon the question now before them by remaining silent in the hope that no division would be called for, he did not hesitate to say that, if the Council were called upon to divide, he should vote against the present Motion. He admitted so fully the broad distinction drawn by both the Members of Government, who had just addressed the Council, between an explanation required from the Government of an act performed in this country for which they were responsible, and of an act performed in England for which they were not responsible, that he could have no hesitation on which side of this question he ought to vote. He gave no opinion whatever upon the merits of the supposed grant to the Mysore family which had given rise to the debate. Whatever opinion he might have formed upon the question, he did not consider it to be any part of his duty to declare it as a Member of this assembly; but agreeing, as he did, with what had fallen from the Honorable the President of the Council that, while the Government might be fairly asked to explain the acts of those who were subordinate to them, they could not fairly be called upon to explain the acts of those to whom they were themselves subordinate, he should, if a division were called for, vote against the Motion.

THE VICE-PRESIDENT said, the Honorable Member who had spoken last, had rather appealed to him to withdraw his Motion upon the statement of the Honorable the President in Council, that inconvenience would arise from the production of the papers specified in the Motion. The Honorable Member had been more easily satisfied than himself. He (The Vice-President) would take leave to inform the Honorable Member that he must judge for himself of the statement of Government. It was not mere inconvenience to the Government that we should care about, but whether the embarrassment was such as would be productive of public evil. He did not ask the Government to tell us what they had done on the subject. He believed that the production of the papers would occasion no evil, and that it could not in any possible way affect the position of the Government. He did not ask the Government to lay before us their own remonstrance; he gave them credit for having made a remonstrance on the subject. He simply asked for the production of information that he might form his own opinion. He was quite satisfied now that no possible danger or inconvenience could arise from his pressing his Motion. If he had any doubt before on the subject, it was this that, by asking for information which had not already been communicated to the family, he might be raising in their

minds hopes and expectations which might not after all be realized. That doubt however had been entirely removed by the speech of the Honorable Member (Mr. Beadon), as it now appeared that the Secretary of State was so little careful of keeping his Despatch a secret, that he had given Prince Gholam Mahomed a letter to the same effect as the orders he had sent out to the Government of India. It would seem therefore that what had been given to Prince Gholam Mahomed was refused by the Government of India to the Members of this Council.

The Honorable Member (Mr. Beadon) had appealed to him, as to the course which would have been followed, under the state of things which existed before the constitution of this Council, when the Council of the Governor-General in the Legislative Department consisted of four Members. He (the Vice-President) had had the honor of holding the position of fourth Ordinary Member of Council, and he fully bore out the Honorable Member's statement that no information he then applied for was refused to him. Carrying out that principle, he saw no reason why any information should now be refused to any Member of this Council, which was in the possession of the Members of Government.

SIR BARTLE FRERE asked, if the information which was usually so laid before the 4th Ordinary Member of Council was ever published?

THE VICE-PRESIDENT said, it was quite open to any Honorable Member of this Council at any time to move that the room be cleared of strangers. But what he (the Vice-President) complained of was that information should be given to Prince Gholam Mahomed, which was refused to the public. He was quite astounded at the statement which had been made by the Honorable Member (Mr. Beadon), that the Members of this Council were to obtain their information out of doors. Did he mean to say that matters talked of elsewhere could not be laid before the Council? He (the Vice-President) was not disposed to look for his information from any indirect channel. He did not think it was consistent with his position to go to Russapugla, or to meet the Prince in his morning and evening drives to seek for information. But he came forward in a legitimate and honest way, and he asked the Members of this Council to support him in asking the Government to give him this information. The Honorable Member (Mr. Beadon) had said that he did not think it necessary to ask for the information, when all that could be told was known out of doors. But he (the Vice-President) begged leave to tell him that he never went out of doors to obtain information. He had heard several persons talking about the matter, but he had not asked any one for any information on the subject. He came in his place in this Council and asked every Honorable Member to support him in his Motion for the production of full information in a legitimate manner.

It had been said that this Motion amounted to a vote of want of confidence in the Government. He could assure Honorable Members that nothing was farther from his intention than that his Motion should assume such a character. In what respect did a Motion for the production of these papers show a want of confidence in the Government? He simply asked for the production of the Despatch from the Secretary of State, showing that a sum of money had been paid, or ordered to be paid or secured. He believed that the Government had received a Despatch, having reference to this subject, and he had sufficient confidence in the Government to believe that they would pause before acting upon it, if it were an illegal order. But he would ask if the Governor-General in his Executive capacity had the power of remonstrating, why should not we also possess the same power?

SIR BARTLE FRERE said, that what he stated was, that by the supposition whatever action upon this matter was necessary, whether in the way of obedience, or remonstrance, or otherwise, rested with the Executive Government, and that the putting of these questions at the present moment was tantamount to saying that this Council did not believe that the Exe-

cutive Government had done its duty in the matter.

THE VICE-PRESIDENT said, he meant nothing of he kind. He simply asked for the production of the papers. The Honorable the President of the Council now admitted by implication that there had been such a Despatch as was asked for. He (the Vice-President) did not know if the Executive Government had remonstrated or not. He had heard out of doors that they had remonstrated, but he had not asked if the Government had done so or not. He only asked to see the Despatch, in order that he might form his own opinion, and he wanted to know whether the amount ordered to have been paid by the Secretary of State was included in the estimates or not, because, if it was not, it would increase the deficit. The Honorable the President of the Council had said that he (the Vice-President) seemed to doubt the truth of those estimates. He could only say that he had no such intention. He believed that they were quite true. He did not object to them before, nor did he object to them now. He simply asked, whether they were meant to include this charge or not?

He admitted that the Trades Licenses Bill had been brought in by the late Right Honorable Financial Member, and that the License Tax was part of his measures. But if he (the Vice-President) had heard, during that Gentleman's lifetime, that half a million was ordered to be paid to the family of Tippoo Sultan, he should certainly have asked him whether that was the fact, and whether that amount was included in the estimate of Income and Expenditure for the year 1860-61.

The Honorable the President in Council had said that he should have liked to know whether the Government could have resisted the order of the Secretary of State. He (the Vice-President) was not prepared to offer any opinion on the subject until he was in possession of particulars, as he wished to know whether the order of the Secretary of State was a legal order or not.

Then it was said, what did you want the papers for? When he saw the papers, he should be able to say what he would do in the matter. At present, he simply wanted to know what was the order. He did not wish to know what the Government had done upon it. The Honorable the President of the Council seemed to think that he (the Vice-President) was going to impeach the Secretary of State. He (the Vice-President) would only say that he was a Legislator, and he wished to know whether we were to provide for half a million of money to be paid to the descendants of Tippoo. It might be that we had no control over the orders of the Secretary of State, but he might consider if he should not refuse to pass any further tax until the Secretary of State was restrained from ordering any lavish expenditure in the way of voluntary gifts out of the revenues of India. He wanted to get at facts before he acted as a Legislator. He did not intend to move a vote of censure on the Secretary of State, but simply to know how to deal with one of the Tax Bills now before the Council. Mr. Wilson had laid before us full information on the subject, and now he (the Vice-President) wished to know whether the half million in question had been paid or not?

But it was said that some Members of this Council might get up and move a vote of censure when the information was furnished. He would only say that "sufficient for the day was the evil thereof."

Then it was asked, who was responsible for this grant?

SIR BARTLE FRERE begged to say that the case he put was simply that which was stated by his Honorable and learned friend opposite (Sir Charles Jackson), and which was also stated by the petitioners. He had not admitted any thing about a grant, but had confined himself to the allegations of the petition and the statements of the proposed Motion.

THE VICE-PRESIDENT.—How were we to act on report? We wanted information. The Honorable Member of Government (Mr. Beadon) had stated that Prince Gholam Mahomed was in possession of a letter from the Secretary of State, informing him of

the order, but he told us "mind, I do not speak from what I know as a Member of Government, but from information which I have obtained out of doors." He (the Vice-President) wished to know whether it was a payment or a security which the Secretary of State had ordered. If a security, he had no hesitation in saying that the case was still worse. We all knew that it was a much easier matter for a man, when he was insolvent, to give a bill than to pay money. It must be remembered that, if the money was to be paid hereafter, there would also be the interest to pay. He did not think that there was any thing in the Act of Parliament which gave the Secretary of State any power to anticipate the revenues of India. He found it laid down in the last Act, by which the Government of India was transferred to Her Majesty, that all the territorial and other revenues of the country were

"vested in Her Majesty to be applied and disposed of, subject to the provisions of this Act, for the purposes of the Government of India,"

and that all charges and other tributes,

"lawfully incurred on account of the Government of India, and all payments under this Act, shall be charged and chargeable upon the revenues of India alone, as the same would have been if this Act had not been passed, and such expenses, debts, and liabilities, and payments as last aforesaid had been expenses, debts, and liabilities lawfully contracted and incurred, by the said Company, and such revenues shall not be applied to any other purpose whatsoever."

He (the Vice-President) did not know, if the alleged grant had been ordered by the Secretary of State to be given for the service of the Government of India or not. If he were asked to offer an opinion on the subject, he would decline to do so until he saw the papers. Another part of the Act said—

"The expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council, by virtue of this Act, shall be made without the concurrence of a majority of votes at a Meeting of the Council."

It was clear therefore, that Parliament had been very careful to provide how the money was to be spent, and he scarcely thought that the Secretary of State could make any grant without the concurrence of a majority of the Council, or authorize any fresh loans without consideration, leaving posterity to pay them.

He would repeat that he disclaimed all intention of moving a vote of censure, or a vote of want of confidence in the Government of India. He confidently believed that the Government of India had done their duty in the matter. But he knew now that there had been a Despatch from the Secretary of State, because the Honorable Member (Mr. Beadon) had stated that, at the same time the Despatch was received, Prince Gholam Mahomed arrived with a letter from the Secretary of State. If the Governor-General in His Executive capacity had the power to remonstrate, and if the Honorable Member (Mr. Beadon) had said that we were the Council of the Governor-General only enlarged, why could we not remonstrate also? He (the Vice-President) thought we had all an equal right to remonstrate, but he did not know if he had any thing to remonstrate against. He could not remonstrate upon what was said out of doors. He wished to see what the Despatch contained, so as to be able to perform his duty in the way in which he thought it ought to be performed.

He did not quite understand what the Honorable the President of the Council had stated with reference to the mercantile community.

SIR BARTLE FRERE explained, that he had mentioned as a proof of the disposition of the Government to afford the mercantile community any useful information in its power, that a letter had been written within the last few days to certain leading Members of that community to inform the Go-

vernment, after conferring with the Accountant General and the Financial Secretary, as to which of the returns and accounts now periodically rendered to Government were of real importance to the commercial community; and there was every desire on the part of the Government to give any such information which could with propriety be made public.

THE VICE-PRESIDENT said, he did not object to the mercantile community being furnished with any information. He thought that they were fully entitled to receive every information affecting them. But he did not see why this Council should not have the same privilege. He did not see why the mercantile community should be treated more favorably than this Council We were a public body. As a Member of that body, he was anxious to see a Despatch on a matter of public interest, and he certainly thought that it ought to be submitted to the Council. He wished to know whether the item in question was in-included in the sketch estimate or not, and then he should be able to know whether it was included in the deficit or not.

Then it was said, that we should be playing into the hands of an influential party at home. He was not acting from party motives, but merely in the discharge of his duty here. He did not care if he played into the hands of a party at home or not. He was bound to discharge his duty to the best of his judgment, and to act upon the real facts and circumstances of the case. He did not ask for information in consequence of the petition presented to the Council last Saturday. But he asked for it to enable him to perform his duty as a Legislator properly when the Trades License Bill came before the Council, and because he desired to assert the right of the Council to that which was denied at the last Meeting. This was a most important matter, and we were not to be laughed out of it, by being told that we should be charged with getting up a mutiny of the Legislative and Executive Governments against the Secretary of State. He had a public duty to perform, and he should endeavor to discharge it even though it might lead to the dissolution of the Council. Before he was a party to the passing of a law, he must satisfy himself that it would be beneficial to the country.

For these reasons, he would persevere in his Motion, and carry it to a division regardless of ulterior consequences. "*Fiat justitia, ruat cœlum.*"

The question being put, the Council divided:—

Ayes 4.	*Noes* 4.
Mr. Erskine.	Mr. Forbes.
Sir C. Jackson.	Mr. Harington.
Mr. Sconce.	Mr. Beadon.
The Vice-President.	Sir Bartle Frere.

The numbers being equal, the Vice-President gave a casting vote with the ayes.

So the Motion was carried.

THE VICE-PRESIDENT moved that Mr. Beadon be requested to take the above Message to the President in Council.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS' SETTLEMENT.)

MR. FORBES moved that Mr. Beadon be requested to take the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)" to the President in Council, in order that it may be submitted to the Governor-General for his assent.

Agreed to.

VACATIONS (CIVIL COURTS.)

MR. SCONCE moved that Mr. Beadon be requested to take the Bill "to amend the law relating to Vacations in the Civil Courts within the Presidency of Fort William in Bengal" to the President in Council, in order that it may be submitted to the Governor-General for his assent.

Agreed to.

EMIGRANT VESSELS.

SIR BARTLE FRERE moved that Mr. Beadon be requested to take the Bill "relating to vessels carrying Emigrant Passengers to the British Colonies" to the President in Council, in order that it may be submitted to the Governor-General for his assent.

Agreed to.

STAMPS.

MR. BEADON gave notice that, at the next meeting of the Council, he would bring in a Bill for the further amendment of the Stamp law, and move for a suspension of the Standing Orders, to enable him to carry the Bill through its subsequent stages forthwith. The necessity for the proposed measure had arisen from the non-arrival of the adhesive Stamps expected from England, which it was thought would have arrived long ago.

MINORS.

MR. SCONCE moved that the Bill "to amend the law relating to Minors" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Erskine, and Mr. Sconce.

Agreed to.

CIVIL PROCEDURE.

MR. HARINGTON gave notice that he would at the next meeting of the Council move the first reading of a Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.)"

The Council adjourned.

Saturday, December 22, 1860.

PRESENT:

The Hon'ble Sir H. B. E. Frere, Senior Member of the Council of the Governor-General, Presiding.

Hon'ble C. Beadon,
H. B. Harington, Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.,
C. J. Erskine, Esq., and
Hon'ble Sir C. R. M. Jackson.

MYSORE GRANT.

The following Message from the President in Council was read by the President:—

MESSAGE No. 248.

In reply to the Message from the Legislative Council, No. 182, the President in Council, with the concurrence of His Excellency the Governor-General, informs the Legislative Council that the interests of the public service forbid his ordering that the papers asked for by the Resolution, which accompanied the Message, should be laid before the Legislative Council, with the exception of the account specified in the first clause of the Resolution, which will be prepared and furnished to the Council as soon as practicable.

The other papers specified in the Resolution relate to a correspondence with the Secretary of State for India, which is yet incomplete; and the President in Council does not therefore feel that he would be justified in transmitting them to the Legislative Council.

The request of the Legislative Council will, however, at once be made known to the Secretary of State.

The President in Council has the honor to inform the Legislative Council, in reply to the concluding clause of the Resolution, that no payment beyond what has been usual of late years to the family of the late Tippoo Sultan is provided for in any account or estimate, of which the results have hitherto been laid before the Legislative Council.

By order of the Honorable the President in Council.

W. GREY,
Secy. to the Govt. of India.

FORT WILLIAM,
The 21st December 1860.

SIR CHARLES JACKSON said that, in the absence of the learned Chief Justice, he might perhaps be permitted to express his gratification at the purport of the Message which had just been received. As he understood it, it appeared to him that the Government had conceded all the information which it was able to give. The Honorable the President in Council had said the other day that he regarded the motion of the learned Vice President as equivalent to a vote of want of confidence. He (Sir Charles Jackson) was satisfied that the Message just received would increase that confidence which the Council had in the Executive Governments and would promote that harmonious action between the Executive Govern-

ment and this Council, which was so greatly to be desired.

LICENSING OF ARTS, TRADES, &c.

THE CLERK reported to the Council that he had received by transfer from the Home Department communications from the Commissioner of the Tenasserim and Martaban Provinces, the Government of the Punjab, and the Government of the North-Western Provinces, on the subject of the Bill "for imposing a Duty on Arts, Trades, and Dealings, and to require dealers in tobacco to take out a License."

SIR BARTLE FRERE moved that these communications be printed.

Agreed to.

DISCOVERY AND DISPOSAL OF HIDDEN TREASURE.

THE CLERK reported that he had received a communication from the Home Department, forwarding papers on the subject of the discovery and disposal of hidden treasure, with a view to the consideration by the Council of the expediency of extending the provisions of Regulations V. 1817 of the Bengal Code and XI. 1832 of the Madras Code to the whole of India, including the Presidency Towns.

SIR BARTLE FRERE moved that this communication be printed.

Agreed to.

WRECKED BOATS.

MR. ERSKINE presented a communication which he had received from the Bombay Government, and moved that it be referred to the Select Committee on the Bill "for the preservation of property recovered from wrecked boats."

Agreed to.

LAND FOR PUBLIC PURPOSES.

MR. FORBES presented the Report of the Select Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)."

Sir Charles Jackson

STAMP DUTIES.

MR. BEADON moved the first reading of a Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the Law relating to Stamp Duties)." He said that, when he had the honor to lay before the Council the Bill for amending Act XXXVI of 1860, which was afterwards passed into law as Act XL of this year, he had endeavored to explain the reason which made it necessary to defer the operati n of Act XXXVI of 1860 in respect to certain classes of documents, and he had shown that this postponement was necessary in consequence of some delay in preparing the stamps which were required for carrying the Act into effect. But Section I Act XL of 1860 was so worded as to apply to all the descriptions of documents for which Stamps had not then been provided, namely, Bills of Exchange, Letters of Credit, Drafts, Cheques on Bankers and others, Promissory Notes, and other orders and obligations for the payment of money, except drafts or orders on demand; and thus to postpone the operation of the Stamp Act, if exercised at all, must be exercised in respect to all the descriptions of documents mentioned in that Section. The Governor-General in Council could not postpone the operation of the law as regarded some of those documents, and at the same time allow it to come into force as regarded others. In the interval, between the passing of Act XL of 1860 and the present time, stamps had been prepared for all the documents mentioned in the Section which did not require adhesive stamps, that is to say, for all except Foreign Bills of Exchange drawn out of India; but the adhesive Stamps for these Bills had not yet been received from England. The object, therefore, of the Bill, of which he now had the honor of moving the first reading, was to allow the Stamp Law to take effect from the 1st January next in regard to all the kinds of documents abovementioned, except Foreign Bills of Exchange drawn out of India, and to give to the Governor General in Council the power to suspend the operation of the law in regard to these documents, until the

adhesive Stamps were received from England.

It had been suggested to him that the present opportunity might be taken to amend the Stamp Law in other respects in which it had been thought defective. But as it was his intention to move the suspension of the Standding Orders, in order that the Bill might be passed through all its stages to-day, he was unwilling to introduce any subject that might lead to a discussion.

The Bill was read a first time.

MR. BEADON moved that the Standing Orders be suspended, in order that the Bill might pass through its remaining stages forthwith. It was absolutely necessary that the Act should be passed into law before the 1st January next, and the probability was that the Council would not again meet before that date.

MR. HARINGTON seconded the Motion which was put and carried.

MR. BEADON moved that the Bill be read a second time

The Motion was carried, and the Bill read a second time

MR. BEADON moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported

MR. BEADON then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

CIVIL PROCEDURE.

MR. HARINGTON moved the first reading of a Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)." In doing so, he said he did not know whether the introduction of this Bill to amend the Code of Civil Procedure contained in Act VIII of 1859, at comparatively so early a date after the passing of that Act, called for any apology from him. The difficulty of framing laws which should meet every case for which provision was intended to be made, which should be perfectly clear in themselves and leave no doubt as to their meaning and as to the intention of the framers, and which should at the same time be capable of easy execution, was well known to all who had any practical acquaintance with the science of legislation, and was abundantly attested by the numerous declaratory Acts, and Acts to amend former Acts, which were to be found in the Statute Books. This difficulty was sufficiently great at home, but it was increased a hundred fold here by the vast extent and the character of the country over which Indian legislation extended, the various races and classes in every stage of civilization which they had to consider, and the want so frequently found to exist of proper agents to administer the laws which they passed. It was this want which so often obliged them to impose restrictions, rendered necessary to prevent the law from being abused, but which they would gladly avoid if they could safely trust more to individual discretion. As regarded Codes generally, he believed he was right in saying that few Codes had been passed which had not required constant revision in order to cure defects which experience in their working had brought to light, and if he was not mistaken, some of the American Codes contained an express provision for their periodical revision. The Code of Civil Procedure, which was passed by the Council last year, would, no doubt, occasionally require to be subjected to the same process, but he thought that the time had not yet arrived for a general revision of that Code, and he was happy to be able to add that, so far as he knew, no necessity for such revision existed at present. It seemed proper that he should here advert to the two Acts which had already been passed to amend Act VIII of 1859. Neither of those Acts touched the general principles of the new Code, and the same remark applied to a great extent to the amendments now proposed. The object of the first of the Acts just referred to was to give power to two Judges of the Sudder Court to dispose of regular and special appeals, in-

stead of requiring that every such appeal should be heard and determined by a bench consisting of not less than three Judges. The second Act followed naturally on the passing of the Bill for establishing Courts of Small Causes beyond the Presidency Towns, of which it at one time formed a part, and provided that no special appeal should lie to the Sudder Court in any action of debt and the like, in which the amount or value of the property in dispute did not exceed the sum of 500 Rupees. It was a principal object of this Act, equally with that of the Act previously passed, to afford relief to the Sudder Courts of the Bengal Presidency, the state of whose files rendered it quite impossible for those Courts to dispose of the business brought before them with anything like reasonable despatch.

Before proceeding to notice the particular amendments in Act VIII of 1859, which were now proposed, he would, with the permission of the Council, make a few remarks on the subject of the working of the Code contained in that Act. During the recent recess of the Council he had visited some of the most important stations in the North-Western Provinces, and whenever the opportunity offered, he had gladly availed himself of it to discuss the provisions of the Code with the Judges, Covenanted and Uncovenanted, whom he had the pleasure to meet in the course of his travels, and with the people themselves—amongst these were some natives of rank and several influential bankers and landholders. The Sudder Court at Agra, where he remained some time, kindly admitted him to a conference, at which the Court went over with him those Sections of the Act, upon the construction of which a doubt had arisen, or which appeared to the Judges or to himself to call for amendment. He was also permitted to see the reports submitted by the District Judges subordinate to the Court on the working of the new Code, and he wished to take this opportunity of expressing the obligations under which he felt himself to the Judges of the Sudder Court at Agra for their courtesy, and of thanking them for much valuable information which he had found of very great use in preparing the present Bill.

From the Sudder Court downwards, there appeared to be a very general concurrence of opinion as to the vast superiority of the new Code of Civil Procedure over the Code whose place it had taken, and as to the satisfactory manner in which the Code was working. There was scarcely a dissentient voice. Judges who differed materially on other important points connected with the administration of Civil Justice in this country, all agreed that the new Code was a great success, that it had fully answered the purpose for which it was introduced, and that it had conferred a great boon on the country and on the people. One Judge reported that the Act operated beneficially; that it provided for greater despatch in the disposal of suits; that it checked fraud, admitted of satisfactory justice being done, and tended to lessen litigation. Another Judge declared that the Act had given universal satisfaction to the Judge and suitors. Another Judge bore testimony to the peculiar suitability or adaptation of the Act to the wants of the country, and declared that it saved both time and money, in proof of which he had furnished a statement which showed that, while under the old procedure the average time that suits remained pending in his district was in the Judge's Court 8 months and 19 days, in the Principal Sudder Ameen's Court 10 months and 7 days, and in the other Courts of the District 7 months and 21 days, under the new Procedure it was only 2 months and 20 days in the Judge's Court, and in the Principal Sudder Ameen's and Moonsiffs' Courts it was only one month and 23 days; and that while under the old procedure the costs of twenty-five suits, taken at random, amounted to Rupees 1,711-3-0, the costs of the same number of suits similarly taken, under the new procedure, amounted to only Rupees 687, or very much less than one-half. Testimony no less favorable to the working of the new Code of Civil Procedure was to be found in the report of the Indigo Commission which was lately

sitting. In paragraph 147 of their report the Commissioners, one of whom was a very distinguished Member of the Punjab Civil Service, said :—

"As regards the working of the new Code of Civil Procedure, we have the opinion of some planters that it has already shortened delay. Previous to the passing of this Code, the great delay of the law was a just cause of complaint, and we have no doubt that planters were deterred by the expense and delay from seeking redress in a proper manner. We have examined Mr. Lautour, a Judge of large experience, on this particular head, and it will be seen from his opinion that, if the Moonsiffs are not overburdened and can keep their files clear, the procedure may be expected to work almost like that of a Small Cause Court. That such a desirable result can be effected, we have no reason to doubt, and if so, the planters will have a speedy means of recovering their just dues, and establishing their rights in all cases where real property is not involved, or an hereditary succession is not disputed. A glance at the Code will show this. Suppose one person to sue another for debt, for breach of simple contract, or for damages done to crops, it is clear that under the new Code the plaint, describing the cause and origin of the action, and the remedy prayed for, can be comprised in a few lines. The defendant is not called on to put in any written defence ; he is even forbidden to do so : his answer, which in many instances would be a simple denial, is to be collated from his own lips or from those of his counsel, by the presiding Judge. No local investigation can be necessary in such a case, and as soon as the witnesses of the parties can be brought into Court, the case may be heard and decided, and execution may follow a decree. It is perhaps too much to expect that all cause of complaint and all delay should be at once removed by the new procedure. But if the above provisions are honestly worked by competent Judges, not overburdened with arrears, and if the appellate Courts have leisure to take up appeals as they become ripe for decision, it is quite clear that suits, other than suits for real property, may become as summary as the nature of things will allow, or as the most eager suitor could wish."

He had laid great stress upon the saving of time which had been effected in the duration of suits by the operation of the new Code, because some Officers of considerable judicial experience had expressed their belief that the Code would perpetuate all the delays of the old system. The reports which he had quoted showed that the expectation of these officers had not been realized, and that there was no ground for the belief expressed by them. The very favorable testimony which he had thus been able to bear to the working of the new Code would, he was sure, be very gratifying to the Council, who had expended so much labor, time, and thought on this important law.

He would now proceed briefly to notice the amendments proposed in the present Bill.

The first alteration deemed necessary was in Section 23, to which it was proposed to add the words "within a period to be fixed by the Court issuing the process." He should not have considered this addition of sufficient importance to be made at the present time, were it not that a new Section was thought to be necessary in a subsequent part of the Act in connection with which the words proposed to be added at the end of Section 23 seemed to be required.

A question had been raised as to what was to be done in the event of its being discovered on the day fixed for a defendant to appear and answer that the usual notice had not been served on him in consequence of the failure of the plaintiff to deposit the sum required to defray the cost of issuing the same. He understood that a majority of the Judges of the Sudder Courts at Calcutta and Agra, and the Sudder Court at Madras, had held that such omission on the part of the plaintiff constituted a default, warranting the dismissal of the suit. On the other hand, it was contended that the Code made no provision for the dismissal of the suit under the circumstances stated, and that, even supposing the view taken by the Judges of the Bengal and Madras Sudder Courts to be correct, it was very clear that the rule as to judgments against plaintiffs by default for non-appearance contained in a later Section of the Act, which was the only rule in the Code in respect to defaults by plaintiffs, did not apply. A Section would be found in the present Bill, which would remove all doubts on the point, and, with the words proposed to be added to Section 23, would give the Courts a clear rule for their guidance.

The next alteration proposed was in Section 274 of Act VIII of 1859. That Section allowed of a party arrested under a warrant in execution of a decree for money to remain, pending an enquiry into his circumstances, in the custody of the officer of the Court charged with the service of the warrant, on his depositing the fees of such officer. It had been pointed out by the Sudder Court at Bombay that the Section did not authorise the levy of any fees which were not previously leviable, and that the Clause in the Section respecting the deposit of the fees for the Court's officer was, consequently, at present, inoperative. A few words proposed to be inserted in the proper part of the Section would cure the defect pointed out by the Sudder Court at Bombay.

Section 283 was the next Section which it was considered required to be amended. The amendment proposed in this Section was a very important one, and might be regarded as affecting in some degree the principle of that part of the Code to which the Section related. The Section declared that all questions regarding the amount of mesne profits and interest, as well as sums paid in satisfaction of decrees, should be determined by order of the Court executing the decree, and not by separate suit, and that the order passed by the Court should be open to appeal. But while the Section, as it now stood, allowed an appeal in the comparatively small matters described in the Section, it made no provision for an appeal in many more important matters which constantly came into dispute between the parties to a decree in the course of the execution thereof, and the Sudder Court had held that, under the terms of Section 364 of the Act, no appeal could be allowed in respect of such matters, however erroneous or unjust the order of the Court of first instance might appear upon the face of it. Suppose, for instance, the Court below refused to execute a decree as barred by lapse of time though the application was clearly within the period of limitation, or rejected an application for execution on any other ground equally untenable, or suppose the Court to deliver over either a larger or a smaller quantity of land than had been decreed, as none of these cases would fall within the scope of Section 283, as it had been construed, the aggrieved party would have no remedy—he could not appeal from the order and no new suit would lie. He (Mr. Harington) did not think that this could have been intended. It had been argued that the words "or the like" which were to be found in Section 283 were sufficiently wide to cover all such cases as those supposed, but the Sudder Court had held that the words in question must have been intended to apply only to matters of a similar character to those just before described. A very strong representation on the subject had come up from the Sudder Court at Agra, and a petition had been received from Madras, praying for an alteration of the law; he had reason to know that the Sudder Court at Calcutta concurred with the Sudder Court at Agra in considering the Section, as it was now worded, too restricted, and that, in order to prevent great injustice from being done, it should be enlarged so as to embrace all matters arising out of the execution of a decree as between the parties, not being matters the orders in respect to which were left by law to the discretion of the Court executing the decree. A Section had been introduced into the proposed Bill in accordance with these views. But in order to prevent as much as possible groundless or vexatious appeals or appeals preferred simply to gain time, it was proposed that the appellate Court should have power to reject the appeal without summoning the opposite party, if, on a perusal of the petition of appeal and of the order appealed against, it should see no reason to question the correctness of the order. This power would be exercised as well in cases falling under the Code, as it now stood, as in the cases which would become open to appeal under the present Bill, and, therefore, although the Bill would increase the number of appeals, it was hoped that the power of summary rejection proposed to be

given to the Appellate Court would act as a counterbalance and prevent any great addition to the actual labors of the presiding Judge, besides operating beneficially in other respects. A Section followed giving the benefit of the new law of appeal on certain conditions to parties who might have appealed from an order passed in execution of a decree under the law now proposed, had it formed part of the Code of Civil Procedure as it was passed, but whose appeal under that Code, as it now stood, could not be heard.

The next alteration considered necessary in the present law was also one of some importance. It was found that a large number of applications for special appeal was presented to the Sudder Court, which were not only not drawn up in the manner prescribed by Act VIII of 1859, but which, notwithstanding the restrictive character of the law, showed no ground on which a special appeal was admissible. In some instances this arose, no doubt, from ignorance, but in the great majority of cases it was supposed that the disregard of the law was wilful, and that the object was to gain time, or if an order could be obtained for staying the execution of the decree pending the decision of the appeal, to force the successful party in the Court below into a compromise. The Sudder Court at Agra held that no power of summary rejection existed in such cases, and that all the forms must be gone through, including the summoning of the respondent, before the application could be called up in the same manner as if the appellant had complied in all respects with the requirements of the law, the consequence of which was considerable delay in the final determination of the case, an unnecessary encumbering of the file of the Sudder Court, and great incovenience and expense to the opposite party. To remedy this it was proposed to enact that the application for a special appeal might be summarily rejected without summoning the respondent if, on the face of the application, no special ground within the meaning of the law appeared, and that the order of rejection might be passed by a single Judge of the Court. He had ascertained from the Judges of the Sudder Court at Agra that the Section, amended as proposed, would quite meet their views and remove all objections to the law as it now stood.

An opinion seemed to be entertained in some quarters that the present Code had raised up obstacles in the way of the speedy disposal of applications for special appeal which did not exist under the former Code. He thought that, if the two Codes were compared, the result would be to show that this opinion was erroneous. The new Code certainly took away no powers previously possessed by the Sudder Court in disposing of applications for special appeal, and it imposed no new forms which should cause greater delay in passing final orders on such applications. On the other hand, it had removed three grounds of special appeal, on one of which at least the greatest number of special appeals was admitted under the old law, and it had done away with the double sitting which almost invariably took place under that law, as a matter of necessity, when a special appeal was admitted, and whether the appeal was admitted or rejected, it allowed of the case being disposed of at a single sitting. He was informed that this was generally regarded as a great improvement upon the old law.

Lastly, a Section was proposed which declared that, when the land sold in execution of a decree was a share of a *putteedaree* estate, paying revenue to Government as defined in Section II Act I of 1845, if the lot should have been knocked down to a stranger, any co-sharer other than the judgment debtor, or any other member of the coparcenary, might claim to take the share sold at the sum at which the lot was knocked down. Act I of 1845 admitted a right of pre-emption when the sale of a share of an estate, such as was described in the Act, was made in satisfaction of an arrear of revenue and under a Circular Order of the Western Sudder Court, which that Court was empowered to issue by another Act which had been virtually repealed

by the new Code of Civil Procedure, the right was extended to sales made in execution of decrees of Court. The Circular of the Sudder Court had of course become abrogated with the law under the authority of which it was issued; but as it seemed desirable, with reference to the peculiar character of the estates known as *putteedaree* in the North-Western Provinces, to which the application of Act I of 1845 was almost entirely restricted, that the co-sharers of such estates should continue to enjoy the privilege of pre-emption in the case of a sale of a share of the common estate under an order of Court, the Section, to which he was now referring, had been introduced into the Bill.

In connection with this subject, he wished to refer to another question which had given rise to much discussion, namely the expediency of prohibiting by law the forced sale of real ancestral property in execution of decrees of Court. A law to this effect was strongly advocated by some of their ablest and most experienced officers and by many respectable and intelligent natives, and he was bound to confess that what he had lately heard had rather shaken the views which he had previously held on this most important subject. In introducing a Bill in the early part of the year 1858, to facilitate the recovery of property of which possession had been wrongfully taken during the mutiny of the preceding year, he observed that

"it was the opinion of several old and experienced officers, that in allowing the compulsory sale of land in satisfaction of money decrees, we had acted unwisely, and without a due regard to native feeling and custom. It was alleged that the practice, if not altogether unknown in Native States, was rarely, if ever, resorted to in them, and the frequency with which such sales had taken place under our system, was said to have made our rule very unpopular amongst the people. It was also objected that by removing the old landholders from the position which they had so long held, we had deprived ourselves of the support which they were able to afford us in times of trouble, such as we had lately passed through; and that the new men, who had taken their places, having no local influence and being looked upon with dislike by the old proprietors and the ryots generally, were elements rather of weakness than of strength."

The subject had continued to occupy his earnest attention, and after much consideration, the conclusion to which he had come was that it might be advisable to give the local Governments power to declare in any part of the Territories, subject to their authority, that real ancestral property should not be liable to be sold by order of Court in satisfaction of a debt incurred after the date of the declaration, unless the property should have been expressly hypothecated to the judgment creditor as security for the payment of the money. The question was one of very great difficulty, and it had better perhaps be separately considered. A paper had recently been communicated to the Council, by which they learned that the Honorable the President of the Council had been asked to bring in a Bill of a somewhat similar character in respect to grants made to persons as a reward for services rendered during the mutinies. The subject he had been discussing might be considered at the same time as that Bill. Meanwhile, he might mention that much benefit had resulted from the introduction into the new Code of Civil Procedure of the rule which required that, whenever an Estate was ordered to be sold by the Collector in satisfaction of a decree for money, a reference should be made to the Collector, with a view to some arrangement being entered into, if possible, by means of which the judgment debt might be satisfied without the necessity of a sale. The effect of this rule had been to prevent a large number of sales, and the practice was found to give general satisfaction.

He had now explained the various amendments which were considered immediately necessary in the new Code of Civil Procedure. Some verbal alterations might be called for in Sections not noticed by him, but these could be considered, and, if found necessary, introduced in Committee. For instance, the Sudder Court at Bombay had pointed out that in the first line of Section 33, taking that Section

in connection with Section 12, the disjunctive conjunction "or" had been wrongly used instead of the copulative conjunction "and." He (Mr. Harington) did not feel sure that the Sudder Court at Bombay was right. At any rate he was quite confident that the intention of the Section was clear, and could not be misunderstood—but of course he could have no possible objection to the substitution of the word "or" for "and" if the former word were considered the more accurate of the two.

Mr. Harington concluded by apologizing to the Council for having occupied so much of their time with these remarks.

The Bill was read a first time.

FLOGGING.

MR. HARINGTON moved the second reading of the Bill "to provide for the punishment of flogging in certain cases."

SIR CHARLES JACKSON said he would ask the Honorable Member to postpone his Motion on two grounds. The first was a personal ground, namely, that from the pressure of his duties in Court, he had not had time to give the matter that attention which it deserved. The second was that, as the learned Chief Justice, who had devoted so much care upon the Penal Code, with which this Bill was proposed to be incorporated, was absent, he (Sir Charles Jackson) was desirous to have his assistance in the consideration of the measure.

MR. HARINGTON said that he could have no hesitation in acceding to the request of the Honorable and learned Judge for the postponement of the Motion for the second reading of this Bill. In reference to the second ground, upon which the Honorable and learned Judge had put his application, he (Mr. Harington) might be permitted to mention that, as soon as he heard that the Honorable and learned Vice-President might not be present at the meeting of the Council to-day, he wrote to him and offered to postpone the Motion for the second reading of the Bill. He quite agreed with the Honorable and learned Judge that, as this Bill was intended as a Supplement to the Indian Penal Code, which had been carried through the Council by the Honorable and learned Vice-President, it was very desirable that the Bill should be read a second time in his presence; but the Honorable and learned Vice-President, in reply to his (Mr. Harington's) note, had begged him not to delay the Motion, as he should be sorry to have any business delayed on his account. However, as he had already said, he was quite willing to accede to the Honorable and learned Judge's request, and he begged therefore to propose that the Motion for the second reading of the Bill be allowed to stand over until the next Meeting of the Council.

The consideration of the Bill was accordingly postponed.

ROHILCUND DIVISION.

MR. HARINGTON moved the second reading of the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts."

The Motion was carried, and the Bill read a second time.

ADMINISTRATION OF JUSTICE—IN THE SUPREME COURT (BOMBAY).

MR. ERSKINE moved the second reading of the Bill "for the improvement of the administration of Justice and despatch of business in the Supreme Court of Judicature in Bombay."

The Motion was carried, and the Bill read a second time.

RAILWAYS.

MR. FORBES moved that the Bill "to amend Act XVIII of 1854 (relating to Railways in India)" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

RECOVERY OF RENTS (BENGAL).

The Order of the Day being read for the third reading of the Bill "to amend Act X of 1859 (to amend the law relating to the Recovery of Rent in the Presidency of Fort William in Bengal)"—

MR. SCONCE said that, before moving the third reading of this Bill, he would ask permission to recommit the Bill to a Committee of the whole Council. The Council would recollect that last Saturday a change was made in the first Section, intending to benefit certain classes of suitors. The object was to allow parties, in whose cases the ordinary period of limitation might have expired between the passing of Act X of 1859 and the present time, a further period for preferring such claims. It was meant to give such suitors relief, so that the period unexpired at the passing of Act X of 1859 should still run on after the passing of this Act. He simply proposed the introduction of the words "reckoning from the passing of this Act," after the word "or" in the 8th line of Section I. Without these words the time might be reckoned from 1st August 1859.

Agreed to.

The Bill passed through Committee after the above amendment, and, the Council having resumed its sitting, was reported.

MR. SCONCE then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

ADMINISTRATION OF JUSTICE IN THE SUPREME COURT (BOMBAY).

MR. ERSKINE said that, under ordinary circumstances, the Bill "for the improvement of the administration of Justice and despatch of business in the Supreme Court of Judicature in Bombay," which had passed the second reading to-day, would now have been referred to a Select Committee. This, however, would involve a delay of some months; and since this Bill, as the Council was already aware, had been drawn to meet a special and pressing emergency, and would not be efficacious unless it was passed immediately—as it was a purely local and temporary measure, and seemed to be quite unopposed—he considered that he would be justified in moving, at the next meeting of the Council, not for the appointment of a Select Committee on the Bill, but that the Bill be then passed at once through its remaining stages, without further postponement of any kind—and this he intended to do.

RECOVERY OF RENTS (BENGAL).

MR. SCONCE moved that Mr. Beadon be requested to take the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal)" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

RAILWAYS.

MR. FORBES moved that Mr. Beadon be requested to take the Bill "to amend Act XVIII of 1854 (relating to Railways in India)" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

STAMP DUTIES.

MR. BEADON moved that he be requested to take the Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties)" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

ROHILCUND DIVISION.

MR. HARINGTON moved that the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the General Regulations

and Acts" be referred to a Select Committee consisting of Mr. Sconce, Mr. Erskine, and the Mover.

Agreed to.

CIVIL PROCEDURE.

MR. HARINGTON gave notice that, at the next meeting of the Council, he would move the second reading of the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

The Council adjourned at ½ past 12 o'clock, on the Motion of Mr. Beadon, till Saturday, the 5th January 1861.

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